

**Video Deposition of Annie Laurie Gaylor - November 24, 2009**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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FREEDOM FROM RELIGION FOUNDATION, INC.,  
ANNIE NICOL GAYLOR, ANNIE LAURIE GAYLOR,  
PAUL GAYLOR, DAN BARKER, PHYLLIS ROSE  
and JILL DEAN,

Plaintiffs,

vs.

Case No. 08-CV-588-BBC

President BARACK OBAMA,  
White House Press Secretary ROBERT L. GIBBS,  
Wisconsin Governor JIM DOYLE and  
SHIRLEY DOBSON, Chairman of the  
National Day of Prayer Task Force,

Defendants.

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Video Deposition of ANNIE LAURIE GAYLOR

Tuesday, November 24th, 2009

10:08 a.m.

at

BOARDMAN, SUHR, CURRY & FIELD, LLP  
One South Pinckney Street, Suite 410  
Madison, Wisconsin

Reported by Sarah A. Hart, RPR, RMR, CRR

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1 Video Deposition of ANNIE LAURIE GAYLOR, a  
2 witness in the above-entitled action, taken at the  
3 instance of the Defendants, pursuant to the Federal  
4 Rules of Civil Procedure, pursuant to notice, before  
5 Sarah A. Hart, RPR, RMR, CRR and Notary Public, in  
6 and for the State of Wisconsin, at BOARDMAN, SUHR,  
7 CURRY & FIELD, LLP, One South Pinckney Street, Suite  
8 410, Madison, Wisconsin, on the 24th day of November,  
9 2009, commencing at 10:08 a.m. and concluding at 2:45  
10 p.m.

11 A P P E A R A N C E S:

12 BOARDMAN, SUHR, CURRY & FIELD, LLP, by  
13 Mr. Richard L. Bolton  
14 One South Pinckney Street, Suite 410  
15 P.O. Box 927  
16 Madison, Wisconsin 53701  
17 Appeared on behalf of the Plaintiffs.

18 U.S. DEPARTMENT OF JUSTICE  
19 CIVIL DIVISION, by,  
20 Mr. Brad P. Rosenberg  
21 20 Massachusetts Avenue, N.W.  
22 P.O. Box 883  
23 Washington, DC 20044  
24 Appeared on behalf of the Defendants  
25 President Barack Obama and  
White House Press Secretary  
Robert L. Gibbs.

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1 A P P E A R A N C E S (cont'd)  
2  
3 ALLIANCE DEFENSE FUND, by  
4 Mr. Joel L. Oster  
5 15192 Rosewood Street  
6 Leawood, Kansas 66224  
7 Appeared on behalf of the Defendant  
8 Shirley Dobson, Chairman of the  
9 National Day of Prayer Task Force.

10 ALSO PRESENT: Ms. Rebecca Kratz, in-house counsel  
11 Mr. Dean Van Hoogen, videographer  
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1 I N D E X  
2  
3 E X A M I N A T I O N  
4 BY MR. OSTER: 6  
5 BY MR. ROSENBERG: 69  
6  
7 E X H I B I T S  
8  
9 EXHIBIT NO. PAGE IDENTIFIED  
10 No. 25 Freedom From Religion Foundation 28  
11 Statement of Activities, 2004 -  
12 September 2009  
13 No. 26 3/24/09 E-mail string 100  
14 No. 27 E-mail string w/ FFRF National Day of 107  
15 Prayer questionnaire attached  
16 No. 28 FFRF National Day of Prayer survey 107  
17 results  
18 No. 29 4/22/09 Letter to President Obama 111  
19 from Reverend Gaddy, Interfaith  
20 Alliance  
21 No. 31 Lyndon B. Johnson "Remarks Upon 119  
22 Signing Proclamation National Day of  
23 Prayer, 1965"  
24 No. 32 2009 Columbus Day Proclamation 127  
25 No. 33 Columbus Day Wikipedia printout 130  
No. 34 "Interfaith Alliance Praises 136  
President's National Day of Prayer  
Proclamation" article  
No. 35 National Day of Prayer hypothetical 144  
proclamation  
(Original exhibits attached to original transcript.)  
(Copies of exhibits attached to copies of transcript.)  
R E Q U E S T S  
ITEM REQUESTED PAGE  
Number of lawsuits filed from 2004 to the 39  
present

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1 TRANSCRIPT OF PROCEEDINGS  
2 THE VIDEOGRAPHER: We are officially on the  
3 record at 10:08 a.m. The date today is  
4 November 24th, 2009. This is disk number one in the  
5 deposition of Annie Laurie Gaylor. This is being  
6 taken in the matter of Freedom From Religion  
7 Foundation, Incorporated, et al. versus President  
8 Barack Obama, et al. This is pending in the United  
9 States District Court for the Western District of  
10 Wisconsin, Case No. 08-CV-588.  
11 The deposition is taking place at the  
12 offices of Boardman, Suhr, Curry & Field located at  
13 One South Pinckney Street, Madison, Wisconsin. My  
14 name is Dean Van Hoogen, videographer with Ryker &  
15 Lyle Legal Video Service, and the court reporter is  
16 Sarah Hart from Gramann Reporting.  
17 Will counsel please state their  
18 appearances and whom they represent, beginning with  
19 plaintiff's counsel, and then the reporter will swear  
20 in the witness.  
21 MR. BOLTON: Plaintiffs appear by Attorney  
22 Rich Bolton and by in-house counsel, Rebecca Kratz.  
23 MR. OSTER: Shirley Dobson -- defendant  
24 Shirley Dobson appears by her attorney, Joel Oster of  
25 the Alliance Defense Fund.

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<p>1 MR. ROSENBERG: I'm Brad Rosenberg in the</p> <p>2 United States Department of Justice, Civil Division,</p> <p>3 Federal Programs Branch representing President Obama</p> <p>4 and White House Press Secretary Robert Gibbs.</p> <p>5 ANNIE LAURIE GAYLOR, called as a witness</p> <p>6 herein, having affirmed on oath, was examined and</p> <p>7 testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. OSTER:</p> <p>10 Q Can you please state your name for the record.</p> <p>11 A Annie Laurie Gaylor.</p> <p>12 Q Is it all right if I refer to you -- Ms. Laurie</p> <p>13 Gaylor or Ms. Gaylor or what do you prefer?</p> <p>14 A Ms. Laurie Gaylor is fine or Annie Laurie. Double</p> <p>15 name.</p> <p>16 Q Have you had your deposition taken before?</p> <p>17 A Yes.</p> <p>18 Q All right. How many times?</p> <p>19 A I think only once. It might be once.</p> <p>20 Q What was the occasion?</p> <p>21 A What?</p> <p>22 Q What was the occasion?</p> <p>23 A Marriage Savers lawsuit, which we won.</p> <p>24 Q When was that lawsuit?</p> <p>25 A I would have to look that up. Mid-'90s.</p>	<p>1 really confusing and long-winded, and I might ask a</p> <p>2 triple-compound question. If you ever don't</p> <p>3 understand a question, if you would just ask me to</p> <p>4 rephrase the question, let me know you don't</p> <p>5 understand it, that will let me know to reask the</p> <p>6 question.</p> <p>7 MR. BOLTON: Slow down. I'm just teasing.</p> <p>8 BY MR. OSTER:</p> <p>9 Q Is that fair?</p> <p>10 A Yes.</p> <p>11 Q What is your current position?</p> <p>12 A Co-president.</p> <p>13 Q Of?</p> <p>14 A Of the Freedom From Religion Foundation.</p> <p>15 Q How long have you been co-president?</p> <p>16 A Since the fall of 2004.</p> <p>17 Q What did you do before that?</p> <p>18 A I was -- at the foundation? I was a co-founder of it</p> <p>19 in '76 when I was a college student, and I was a</p> <p>20 volunteer and board member for many years. And I</p> <p>21 joined the staff in '85 as editor of Free Thought</p> <p>22 Today.</p> <p>23 Q Since 1985, has your only occupation, for lack of a</p> <p>24 better word, been with Freedom From Religion</p> <p>25 Foundation?</p>
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<p>1 Q You're probably familiar with the rules of the</p> <p>2 deposition. But just to refresh your memory, I want</p> <p>3 to go over a couple of them. The first one is, you</p> <p>4 understand you've been placed under oath to tell the</p> <p>5 truth to the best of your ability. Do you understand</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q And in that, everything you say and I say is going to</p> <p>9 be transcribed by a court reporter. And so to the</p> <p>10 best of our ability, just remember to say yes or no,</p> <p>11 because the uh-huhs or the uh-uhs or the nods of the</p> <p>12 head, while I understand them, when you're reading</p> <p>13 the transcript it's very difficult to understand</p> <p>14 what's being -- what's meant.</p> <p>15 Is that fair to just say yes or no or</p> <p>16 answer the question verbally?</p> <p>17 A Yes.</p> <p>18 Q And then you understand that if there is a trial in</p> <p>19 this case, the testimony you give today very well</p> <p>20 might be used as evidence in that trial, so it's</p> <p>21 important to give your testimony to the best of your</p> <p>22 ability today?</p> <p>23 A Yes.</p> <p>24 Q And if there's -- if we can agree there's any</p> <p>25 question that I might ask -- sometimes lawyers get</p>	<p>1 A Yes, the only paid job.</p> <p>2 Q All right. Before 1985, what did you do? What was</p> <p>3 your job?</p> <p>4 A After I graduated from college in 1980, I founded and</p> <p>5 published the Feminist Connection newspaper until the</p> <p>6 end of '84.</p> <p>7 Q So you did that in 1976? Is that when you founded</p> <p>8 it, that paper?</p> <p>9 A Co -- no. My mother and I co-founded the Freedom</p> <p>10 From Religion Foundation in 1976 as a regional group.</p> <p>11 And she was asked to go national with it in '78. I</p> <p>12 was in college. And after I graduated in '80, I</p> <p>13 edited the Feminist Connection newspaper.</p> <p>14 Q Is that paper still active today?</p> <p>15 A No. No.</p> <p>16 Q What are your duties as co-president of Freedom From</p> <p>17 Religion Foundation?</p> <p>18 A Well, they're in our bylaws. And with my husband,</p> <p>19 Dan Barker, we're the administrators, and we're</p> <p>20 responsible for running the organization and doing</p> <p>21 everything from starting the lawsuits, initiating the</p> <p>22 lawsuits, to the state church complaints we take on</p> <p>23 behalf of the public, the press releases, responsible</p> <p>24 for the newspaper. We promote the views of the</p> <p>25 foundation.</p>

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<p>1 Q Are you in charge of fundraising?</p> <p>2 A Yes.</p> <p>3 Q Who else would be in charge of fundraising besides</p> <p>4 you?</p> <p>5 A Well, Dan is co-president with me.</p> <p>6 Q So the two of you are in charge of fundraising for</p> <p>7 the Freedom From Religion --</p> <p>8 A Yes, we answer to our executive council, but we have</p> <p>9 the day-to-day administration.</p> <p>10 Q So how is the Freedom From Religion organized? It</p> <p>11 has a -- did you say an executive counsel?</p> <p>12 A Um-hmm.</p> <p>13 Q Is that like the board that controls it?</p> <p>14 A Yes.</p> <p>15 Q And how many people are on the executive council?</p> <p>16 A I think it's nine. Nine seats. There are -- there</p> <p>17 are -- we provide for co-officers. So there's one</p> <p>18 married couple on the board besides Dan and myself.</p> <p>19 Q You and Dan are on the board, then?</p> <p>20 A Yes. We're the only paid officers who can be on the</p> <p>21 governing body.</p> <p>22 Q Is your mother still on the board?</p> <p>23 A No. She's on the board at large.</p> <p>24 Q Below the executive council, is there any other</p> <p>25 committees or groups that help run Freedom From</p>	<p>1 A It's two-tiered. I wouldn't call them the top rung.</p> <p>2 They're the second rung. And they choose the</p> <p>3 governing body.</p> <p>4 Q Who is the governing body?</p> <p>5 A The executive council. It's the officers.</p> <p>6 Q All right. But there's no board above --</p> <p>7 A No.</p> <p>8 Q -- the board of directors. The board of directors</p> <p>9 selects the executive council that then --</p> <p>10 A Yes.</p> <p>11 Q And how often does the board of directors meet?</p> <p>12 A Up to once -- well, it can be more than once a year,</p> <p>13 but we meet once a year now.</p> <p>14 Q So in 2009, how many times did you meet?</p> <p>15 A Once.</p> <p>16 Q In 2008, how many times did the board of directors</p> <p>17 meet?</p> <p>18 A It's always been once.</p> <p>19 Q So it hasn't been more than once? You said some of</p> <p>20 the years you might have met more than once?</p> <p>21 A No, the executive council sometimes meets more than</p> <p>22 once.</p> <p>23 Q Okay. But the board of directors just meets one time</p> <p>24 a year?</p> <p>25 A Um-hmm. They have power to meet more often should</p>
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<p>1 Religion Foundation?</p> <p>2 A There's the board of directors. And the executive</p> <p>3 council is the governing body of the board of</p> <p>4 directors. It's the committee voted on by them to</p> <p>5 run -- to govern the foundation.</p> <p>6 Q So I understand it, the executive council made up of</p> <p>7 nine persons, they --</p> <p>8 A Nine or 10.</p> <p>9 Q Okay. Nine or 10. They, then, select the board of</p> <p>10 directors?</p> <p>11 A No. It's the other way around.</p> <p>12 Q Okay. How many people are on the board of directors?</p> <p>13 A Well, it's about 50. There's one spot reserved for</p> <p>14 every state, and then there are 35 at large. So it</p> <p>15 can be up to 85. And I think we're about 50. But</p> <p>16 then everybody who's on the executive council is</p> <p>17 automatically a member of the board as well, so it</p> <p>18 could be a little larger.</p> <p>19 Q So you're on the -- the board of directors?</p> <p>20 A I am.</p> <p>21 Q All right. So let me back up. Make sure I</p> <p>22 understand this this time: The board of directors is</p> <p>23 the top rung, so to speak, of Freedom From Religion,</p> <p>24 and then they select this executive council to run</p> <p>25 Freedom From Religion; is that correct?</p>	<p>1 they want to.</p> <p>2 Q Is there a document that the board of directors would</p> <p>3 have that would -- like their agenda on the items</p> <p>4 that they would discuss?</p> <p>5 A (Witness nods head.) Yes. I'm sorry.</p> <p>6 Q And what would that document be called? The agenda?</p> <p>7 A Minutes.</p> <p>8 Q Minutes?</p> <p>9 A Well, there's an agenda, and then there's the minutes</p> <p>10 every year. Just like every group does this and</p> <p>11 required by law, Wisconsin statutes.</p> <p>12 Q Does the board of directors discuss fundraising?</p> <p>13 A Well, maybe. They don't -- no, they don't really</p> <p>14 discuss fundraising. They discuss -- they're an</p> <p>15 advisory board for policy questions. They can</p> <p>16 discuss general litigation questions, like directions</p> <p>17 we want to go. But they don't really discuss</p> <p>18 fundraising, no.</p> <p>19 Q Do they discuss the financial aspect of the</p> <p>20 organization?</p> <p>21 A They can ask questions. I mean, they can make</p> <p>22 comments, recommendations. But they are not the</p> <p>23 governing body.</p> <p>24 Q So, for instance, in 2009, did -- the finances, was</p> <p>25 that an issue that the board of directors discussed?</p>

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1 A Well, only in that they were already given all of the  
2 treasury reports. And they could discuss it if they  
3 wished.  
4 Q So generally speaking, let's just say for the last  
5 five years, the board of directors would be given a  
6 treasury report that would disclose the financials of  
7 the organization?  
8 A Yeah, I think you're misapprehending. The governing  
9 body is what deals with all of the other questions,  
10 the governing questions. The board is a geographic  
11 advisory position. It doesn't get involved in  
12 day-to-day.  
13 Q Okay. So how often did the -- how often did the --  
14 how many times did the board of -- sorry. How many  
15 times did the executive council meet in 2009?  
16 A Once.  
17 Q When was that?  
18 A November 9th.  
19 Q So just a couple weeks ago?  
20 A Um-hmm. I'm sorry, November 6th. It was a Friday.  
21 Is that the 6th? Convention started on the 6th.  
22 Yeah. October -- I mean, sorry, November 6th.  
23 Q I was going to actually get to that in a little bit,  
24 but there's a convention usually that is going on at  
25 the same time as the year --

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1 A It starts after our executive council meeting. We  
2 meet beforehand.  
3 Q Okay. Now, in -- so, again, like, for the last let's  
4 just say since 2001, generally has the executive  
5 council met one time a year? Are they --  
6 A Yes. Since 2001, that would be right. In the old  
7 days, we met more often because we needed to because  
8 it was a new group.  
9 Q But you don't meet more often --  
10 A We haven't. We could. They could vote, and they  
11 could meet more often.  
12 Q Now, for the executive council meeting, again, is  
13 there an agenda that's --  
14 A Yes.  
15 Q -- created for the meeting?  
16 A Yes.  
17 Q And minutes are taken for the meeting?  
18 A Yes.  
19 Q And are the financials of the organization discussed  
20 during this meeting?  
21 A Thoroughly.  
22 Q And I assume litigation strategy, is that discussed  
23 during the meeting?  
24 A Yes. I mean, not so much strategy, as updates and  
25 directions we want to go. Nobody is an attorney on

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1 the council.  
2 Q Does the executive council discuss what kind of cases  
3 to take?  
4 A Yes, although the co-presidents -- the president has  
5 broad discretion to file lawsuits.  
6 Q And the president, being you and your husband?  
7 A Um-hmm. Yes. It's in the bylaws.  
8 Q Okay. So as far as who has authority to decide to  
9 file a case, that would be the president?  
10 A Yes.  
11 Q Was the National Day of Prayer lawsuit discussed in  
12 the November 6th -- the executive council meeting  
13 this year?  
14 A Yes.  
15 Q How was it discussed?  
16 A Well, I reported on the status and --  
17 Q What did you say about the lawsuit?  
18 A Well, we reported on five or six lawsuits, so I  
19 reported that, you know, depositions would be taken;  
20 I reported that our attorney was going to be deposing  
21 Shirley Dobson.  
22 Q What did you say about that?  
23 A That's about all I said.  
24 Q Did anybody talk to you about that deposition?  
25 A No. It hadn't taken place.

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1 Q But, I mean, about the deposition that was to take  
2 place.  
3 A No.  
4 Q What else was discussed concerning the National Day  
5 of Prayer lawsuit at this meeting?  
6 A That was about it. I mean, that we've been doing a  
7 lot of work on it.  
8 Q How many employees does the Freedom From Religion  
9 Foundation have?  
10 A We now have eight permanent employees.  
11 Q Eight paid staff, full time?  
12 A Full time permanent. And then we have some student  
13 help that's part time. We have a few part-time  
14 interns, and we have volunteers.  
15 Q I want to go back to the beginning of Freedom From  
16 Religion Foundation. Why -- why was it started?  
17 A My mother and I were very concerned about the  
18 encroachment of religion on government. Jerry  
19 Falwell was in the senate seat, and it was as if  
20 there was a disrespect for the constitutional  
21 principle of separation between church and state.  
22 And, of course, those of us who are not religious  
23 feel that much more deeply when religion is being  
24 promulgated by our government.  
25 Q Was there a specific instance particularly that led



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<p>1 you to start the organization?</p> <p>2 A We -- well, we were concerned about the religious</p> <p>3 dogma and the abortion question. That was probably</p> <p>4 how we first became aware of the question, that</p> <p>5 separation between church and state was not being</p> <p>6 honored.</p> <p>7 Q How is that?</p> <p>8 A Well, you would go to the Wisconsin State Capitol,</p> <p>9 and the rotunda was full of Catholic school children,</p> <p>10 nuns and priests being bussed in to oppose abortion</p> <p>11 as a religious issue and to say that the Bible was</p> <p>12 against abortion. I heard the testimony, my mother</p> <p>13 heard the testimony. It was constant a problem.</p> <p>14 But what caused us to form the Freedom</p> <p>15 From Religion Foundation was prayers going on at the</p> <p>16 Madison City Council and the Dane County Board.</p> <p>17 Q So do you think it was a problem that Catholic school</p> <p>18 kids opposed abortion?</p> <p>19 A That they were urging that their dogma be adopted as</p> <p>20 part of our civil law, yes, because their -- they</p> <p>21 based their -- they were saying that God says that</p> <p>22 this is illegal, God says this is immoral, this is</p> <p>23 taking a life, this is -- it was all religious dogma</p> <p>24 that said that.</p> <p>25 Q If a Catholic --</p>	<p>1 government should not be adopting dogma into our law,</p> <p>2 and that's why we felt there needed to be something</p> <p>3 to counterbalance the religious lobby.</p> <p>4 Q I believe you said you had a problem with these</p> <p>5 Catholic school children being at the Capitol grounds</p> <p>6 and opposing abortion.</p> <p>7 A No. I believe I didn't say that. I believe I said</p> <p>8 that it was very obvious what the problem was.</p> <p>9 Q What was the problem?</p> <p>10 A It was the religious lobby trying to dictate to our</p> <p>11 secular government what our laws should say, that</p> <p>12 they wanted their Catholic dogma inscribed in our</p> <p>13 laws.</p> <p>14 Q So I understand your position in founding this</p> <p>15 organization, it's your position that religious</p> <p>16 groups should not be allowed to do that?</p> <p>17 A No, that's not what I'm saying. You are</p> <p>18 misunderstanding me. I am saying that our government</p> <p>19 should be free from religious dogma. Churches should</p> <p>20 not be running our government. That's what our</p> <p>21 constitution says.</p> <p>22 Q I don't understand the difference between dogma and</p> <p>23 religious beliefs.</p> <p>24 A Do you want me to get a dictionary?</p> <p>25 Q If you could explain it to me, how you understand the</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 19	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 21
<p>1 A And they wanted their dogma to be promoted by our</p> <p>2 civil government.</p> <p>3 Q -- so if a Catholic school child believed that</p> <p>4 abortion was wrong because of their religious</p> <p>5 beliefs, you don't think that that school child</p> <p>6 should be allowed to advocate that as --</p> <p>7 A No, that's not what I'm saying. I'm saying that</p> <p>8 legislators should be upholding separation of church</p> <p>9 and state and not adopting religious dogma in our</p> <p>10 laws.</p> <p>11 Q But I understand what you're saying is that these</p> <p>12 Catholic school children went to the capitol building</p> <p>13 to oppose abortion, and you had a problem with that.</p> <p>14 A Yeah, and I had a problem with the Mormon Church,</p> <p>15 too, legislating against the Equal Rights Amendment.</p> <p>16 It was a very obvious problem that we saw, that the</p> <p>17 organized lobby against women's rights was organized</p> <p>18 religion. Not all religions, but the Catholic, the</p> <p>19 Mormon and the Evangelical Protestant trying to use</p> <p>20 the force of law to dictate their dogma on the rest</p> <p>21 of us. And there was a great harm involved.</p> <p>22 Q So you don't think these religious groups should be</p> <p>23 allowed to petition their government for the redress</p> <p>24 of certain grievances?</p> <p>25 A No, that's not what I'm saying. I'm saying that</p>	<p>1 difference of those terms.</p> <p>2 A I would be glad to, but I think this is going to be a</p> <p>3 long deposition if we don't even get to our case.</p> <p>4 Dogma is -- Catholic dogma says that you have a human</p> <p>5 life at conception. That's faith. That's not truth.</p> <p>6 That's not science. You have to take that on faith.</p> <p>7 That's not what I believe. They believe in a soul at</p> <p>8 conception, and that is why they oppose abortion.</p> <p>9 And many people do not believe that way. That's --</p> <p>10 Q So should they not be allowed to tell government</p> <p>11 officials that's what they believe and they want</p> <p>12 laws --</p> <p>13 A They can tell the government officials whatever they</p> <p>14 like. But government officials should not be</p> <p>15 kowtowing to churches and looking to them to make our</p> <p>16 laws.</p> <p>17 Q Now, I've reviewed -- previewed your website. Would</p> <p>18 it be fair to say that Freedom From Religion</p> <p>19 Foundation -- let me just ask it this way: What is</p> <p>20 the organization's view on religion?</p> <p>21 A Our members are personally free from religion.</p> <p>22 Q What does that mean?</p> <p>23 A They're atheists, agnostics, secularists,</p> <p>24 rationalists, secular humanists. Whatever they like</p> <p>25 to call themselves. Free thinkers is the term we</p>

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<p>1 use.</p> <p>2 Q When you look at your website, doesn't it go beyond</p> <p>3 that to really trying to advocate that people not be</p> <p>4 religious?</p> <p>5 A We are a membership organization for like-minded</p> <p>6 individuals, and our members are personally not</p> <p>7 religious.</p> <p>8 Q But aren't you trying to advocate that position to</p> <p>9 others and convince others to think like you think?</p> <p>10 A Well, we aren't knocking on people's doors and going</p> <p>11 into church pews, no, we're -- we don't hold Sunday</p> <p>12 schools every week trying to get people to join us.</p> <p>13 It's quite different. We're an advocacy group for</p> <p>14 our point of view. We think that there should be an</p> <p>15 alternative to the religion that is out there every</p> <p>16 day 24/7 on the radio, TV. And that there should</p> <p>17 be -- our views should be heard as well. We think</p> <p>18 that free thinkers are rational and that we should be</p> <p>19 a part of the marketplace of ideas in this country.</p> <p>20 Q But do you think that religion is bad for the</p> <p>21 country?</p> <p>22 A I think that religion in government is always bad.</p> <p>23 Q Right, but I'm not asking government. I'm saying,</p> <p>24 based on previewing your website, I kind of got the</p> <p>25 impression that religion in general is bad. So I'm</p>		<p>1 that religion has done more harm than good. Mostly</p> <p>2 our members think that you shouldn't believe</p> <p>3 something unless it's true and that you should have</p> <p>4 evidence for your beliefs. And it's not really good</p> <p>5 for people to believe things that aren't true.</p> <p>6 Q So would it be fair to say, then, that one of your</p> <p>7 purposes is to educate people as to the harm of</p> <p>8 religion?</p> <p>9 A Well, no, our bylaws say educate people about matters</p> <p>10 relating to nontheism.</p> <p>11 Q Right, I'm just trying to unpack that so I can</p> <p>12 understand that, because I really don't understand</p> <p>13 that phrase, "matters of nontheism." Is it a fair</p> <p>14 understanding that you educate people on the dangers</p> <p>15 of religion?</p> <p>16 A Yes. And in particular, religion in government.</p> <p>17 Q So how does Freedom From Religion go about obtaining</p> <p>18 those two principles, those two objectives?</p> <p>19 A Well, we take a number of complaints on behalf of</p> <p>20 members of the public and our own members about</p> <p>21 violations of the separation between church and</p> <p>22 state, and we litigate over that when necessary. We</p> <p>23 try to solve problems without litigation, and we have</p> <p>24 solved many violations that way. And we educate, we</p> <p>25 publish books, we have a newspaper.</p>	
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<p>1 asking you as an organization, do you guys take the</p> <p>2 view that just religion in general is bad for the</p> <p>3 country?</p> <p>4 A Well, our members personally reject religion. They</p> <p>5 have diverse views about the harm of religion. We</p> <p>6 all agree there's harm in religion in government.</p> <p>7 But our members personally, yes, do feel that</p> <p>8 religion causes more harm than good.</p> <p>9 Q How does Freedom From Religion go about -- in case I</p> <p>10 didn't ask this question, let me ask it. What are</p> <p>11 the objectives of Freedom From Religion Foundation?</p> <p>12 A We have two purposes. We promote the constitutional</p> <p>13 principle of the separation between church and state,</p> <p>14 and we educate the public about matters relating to</p> <p>15 nontheism. We serve as an umbrella organization for</p> <p>16 like-minded individuals who are free from religion.</p> <p>17 Q So I understand the second principle to educate</p> <p>18 people about the non -- did you say nontheism?</p> <p>19 A Um-hmm.</p> <p>20 Q Earlier you had talked about how your members believe</p> <p>21 that religion harms people. Is that what you're</p> <p>22 talking about, educating people about religion?</p> <p>23 A Religion in government harms people always.</p> <p>24 Q I'm asking outside of government.</p> <p>25 A Well, I think that, yeah, a lot of people would feel</p>		<p>1 Q Do you educate the public through press releases?</p> <p>2 A Well, I guess we educate the media through press</p> <p>3 releases.</p> <p>4 Q And do you educate the people through press releases</p> <p>5 that way?</p> <p>6 A I think the press releases are educational, yes.</p> <p>7 Q So is -- the litigation component, does that also</p> <p>8 feed into your objective to educate the public? In</p> <p>9 other words, by litigating cases, are you not also</p> <p>10 serving your objective of educating the public?</p> <p>11 A Yes, in some instances, because usually there's a</p> <p>12 misapprehension at the root of the violation, which</p> <p>13 what I think is true for the National Day of Prayer,</p> <p>14 which is grossly distorting history. The legislative</p> <p>15 record is based on bad history.</p> <p>16 We're an educational group and</p> <p>17 everything we do is supposed to have an educational</p> <p>18 purpose.</p> <p>19 Q What percentage of Freedom From Religion's operations</p> <p>20 are related to the lawsuits?</p> <p>21 MR. BOLTON: To which lawsuit?</p> <p>22 BY MR. OSTER:</p> <p>23 Q Litigation in general.</p> <p>24 MR. BOLTON: Oh, okay.</p> <p>25 THE WITNESS: Well, I don't have a</p>	

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1 percentage breakdown, but I can go through the last  
2 couple of years. You have that material.  
3 BY MR. OSTER:  
4 Q Yeah, if you can just tell me based on being the  
5 president. I'm just wondering of your day-to-day  
6 activities, how much of your time is actually spent  
7 around the litigation versus educating people.  
8 A Well --  
9 Q 50/50 proposition, 75/25?  
10 A It varies every year. Every lawsuit is different.  
11 Some, I have very little to do with. I don't think I  
12 could give you our percentage. Mostly my time has  
13 been spent with complaints about the separation of  
14 church and state, nonlitigation. But I would say  
15 that that's -- over the years has been -- separation  
16 of church and state complaints, at least 50 percent  
17 of my time.  
18 And we've hired a staff attorney, and  
19 now I'm a little less hands-on in that regard. But  
20 it's been a very major component. But mostly it's  
21 not litigation; it's nonlitigation.  
22 Q What do you mean by that -- do you mean solving  
23 matters?  
24 A We write letters of complaint to public officials  
25 over violations, and we do research pertaining to

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1 that. We have hundreds and hundreds of complaints  
2 coming in all the time from the public and members of  
3 our group.  
4 Q Where does Freedom From Religion get its money to  
5 operate?  
6 A From its membership.  
7 Q How does that work?  
8 A Dues and donations. And then we do two fundraisers a  
9 year.  
10 Q So let's go to 2009. Actually, when does your fiscal  
11 year end?  
12 A It's on the calendar year.  
13 Q So do you already have the numbers from 2009 yet?  
14 Are those numbers -- have your budget numbers been  
15 tabulated yet for 2009?  
16 A What do you mean?  
17 Q How much money came in?  
18 A Well, no. The year isn't over.  
19 Q Okay. So let's go back to 2008. How much money --  
20 what was the operating budget, the total budget, for  
21 Freedom From Religion Foundation?  
22 A Well, I would have to look it up for you because I  
23 don't have it memorized. But I was told I needed to  
24 bring it, so hold on.  
25 MR. BOLTON: Can we go off the record for

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1 just a minute?  
2 MR. OSTER: Yeah.  
3 THE VIDEOGRAPHER: We are off the record at  
4 10:35 a.m.  
5 (Pause in proceedings.)  
6 (Exhibit 25 marked for identification.)  
7 THE VIDEOGRAPHER: We are back on the  
8 record at 10:39 a.m.  
9 BY MR. OSTER:  
10 Q I've handed you what we've marked as Deposition  
11 Exhibit No. 25. Now, I numbered the pages, just so  
12 we can have some reference.  
13 A Okay.  
14 Q I want to draw your attention to page number five of  
15 that exhibit. Let me just ask you some questions  
16 based on this. What were the -- what was the total  
17 budget for 2008?  
18 A Well, we came in under budget -- well, no. We raised  
19 more money than we thought we would. I don't have  
20 the budget here.  
21 Q Okay. So am I understanding this document correctly  
22 that you guys brought in \$2,048,557 in 2008?  
23 A Um-hmm. Yes.  
24 Q All right. And I don't see on here any line item  
25 from attorneys fees.

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1 A Well, if you look under "Revenue," the legal fund  
2 donations were 59,464. And if you look under  
3 "Expenses," legal was 97,498.  
4 Q So do you guys make -- bring in revenue off of  
5 attorneys fees? In other words, when you win a  
6 lawsuit --  
7 A No, we never make any money on our litigation. The  
8 attorneys might get their money. The attorney fees  
9 might be paid, but the foundation never gets all of  
10 its fees and time back.  
11 Q Okay. So if you guys win a lawsuit as a plaintiff  
12 under a Section 1983 case and so you can recover fees  
13 as the prevailing party, that money just goes to the  
14 attorneys; it doesn't go to the organization?  
15 A We never get our full -- yes. The -- I can't  
16 remember how the checks are cut.  
17 Can I ask you, Rich?  
18 MR. BOLTON: No.  
19 THE WITNESS: But, I mean, the attorneys  
20 fees might be covered, but we never make money on our  
21 lawsuits. It doesn't work that way.  
22 BY MR. OSTER:  
23 Q When you guys -- so what percentage of your revenue  
24 comes from donations?  
25 A Well, I don't have a pie chart here. Donations are



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1 very important; they're our life blood. You have the  
2 figures there. But I don't have a pie chart. I  
3 would have to get a calculator to give you a  
4 percentage.  
5 Q What would sales be?  
6 A Sales are books, T-shirts, bumper stickers, winter  
7 solstice greeting cards. Mostly books.  
8 Q So you mentioned that donations is a large part of  
9 your operating budget; is that correct?  
10 A We do the special project fundraiser twice a year,  
11 and people contribute towards specific projects.  
12 Q Okay.  
13 A And that's what -- we raised the money before we  
14 spent it on these things.  
15 Q So in 2008, the total revenue you brought in was over  
16 2 million. But it looks like your expenses were  
17 1.1 million approximately?  
18 A Yes.  
19 Q So you made \$914,000 in 2008.  
20 A But a lot of that was donated for special projects  
21 continuing into this year or the future. Also,  
22 you'll see it's donations and bequests, and we got a  
23 very large unexpected bequest on the last week of the  
24 year. So that was totally --  
25 Q So where would we find the breakdown of the different

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1 donations and special projects?  
2 A Well, I didn't bring everything because that wasn't  
3 requested. But I do have one of the things. Let's  
4 see. In the winter/spring '08 fundraiser, our legal  
5 fund -- and that's last -- that came out at the end  
6 of November/early December. And we're still getting  
7 donations coming in from it, actually, but mostly  
8 they came in in December, January, February. So it  
9 crosses the calendar year. We raised \$29,541.85 for  
10 legal, designated for legal.  
11 And then in the spring, we did another  
12 fundraiser. And designated for legal was 19,182.  
13 But we have a -- anybody can give money for legal.  
14 It's earmarked in a particular way. So that's not  
15 the only money coming in for legal, but from their  
16 two fundraisers, that's what came in.  
17 Q So it looks like you made \$914,000, as far as you  
18 brought in \$914,000 more than you spent that year.  
19 And then it shows here your net assets at the end of  
20 the year was approximately 6.4 million. Am I reading  
21 that correctly?  
22 A That's correct.  
23 Q Now I want to go back to page one of this exhibit in  
24 2004. And what was your total income from that year  
25 in 2004?

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1 A 803,000.  
2 Q All right. And how much did you receive in  
3 donations, about 305,000?  
4 A Yes. Including bequests.  
5 Q And then what were your total expenses for that year?  
6 A 611,000.  
7 Q So in 2004, if I understand this correctly, you guys  
8 made approximately \$192,000, as far as you brought in  
9 that much more money in revenue than you spent out.  
10 So you guys show at least a net income of 192,000?  
11 A Yes. We do fundraising at the end of the year. So  
12 we always -- we've never been in the black -- I mean  
13 in the red at the end of the year.  
14 Q Now, I don't -- I can't tell from this statement what  
15 your net assets were, but if you go to page two here  
16 in 2005, it shows your net assets at the beginning of  
17 the year of 3.2 million. So I guess the assumption  
18 is there that at the end of 2004, you get net assets  
19 of 3.2 million? Would that be a fair assumption?  
20 A Yes.  
21 Q All right. So then again in 2005, it looks like you  
22 brought in \$994,000 in revenue, and you only spent  
23 \$595,000 in expenses.  
24 A What year are you looking at?  
25 Q 2005.

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1 A Oh. Yes.  
2 Q And then in 2 --  
3 A Do you want to notice the legal fund donations versus  
4 what we spent out, by the way?  
5 Q Can you explain that?  
6 A Well, we raised 71,000 in legal donations, and we  
7 spent 83,000.  
8 Q All right. How do you guys receive donations? In  
9 other words, you receive dues, correct, and  
10 donations?  
11 A Yes.  
12 Q All right. So let's just go to 2004. Where does it  
13 show in here the amount of dues that you received?  
14 MR. BOLTON: The amount of what?  
15 MR. OSTER: Dues.  
16 THE WITNESS: Do you see under "Renewals"  
17 and "New members"?  
18 BY MR. OSTER:  
19 Q Yes.  
20 A Right at the very top, the two first items.  
21 Q All right. In 2004, if you remember, how much were  
22 the dues for renewal?  
23 A Well, they start at 40. But then there are different  
24 levels of membership, including life member is 1,000.  
25 So that would all be included in there. Most people

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<p>1 are individual, 40; household, 50; but there are</p> <p>2 different levels that they can sponsor.</p> <p>3 Q All right. And would there be different dues for</p> <p>4 whether you were a renewal or a new member?</p> <p>5 A No.</p> <p>6 Q But you split them out there just to let people know</p> <p>7 we have some new members here?</p> <p>8 A Yes, to see the difference, yes.</p> <p>9 Q How many members did you have in 2004?</p> <p>10 A Well, I didn't bring that with me, but in 2005/2006 I</p> <p>11 can tell you that we were 6,000, almost 7,000 in</p> <p>12 2006.</p> <p>13 Q So by the end of 2006?</p> <p>14 A About, yeah. I didn't -- I didn't bring that with</p> <p>15 me. We have doubled our membership since then.</p> <p>16 Q Since when?</p> <p>17 A Since 2006.</p> <p>18 Q So 2006 you had -- you said 6- or 7,000?</p> <p>19 A Yeah, 6- or 7,000.</p> <p>20 Q Members?</p> <p>21 A And now we have 14,000.</p> <p>22 Q What do you account to that growth?</p> <p>23 A Well, there's lots of speculation. I think a lot of</p> <p>24 our members were -- new members were concerned about</p> <p>25 the faith-based initiative, George Bush and his</p>	<p>1 Is that your understanding?</p> <p>2 MR. BOLTON: Right. And I don't have a</p> <p>3 problem generally, but I don't want to get into any</p> <p>4 privileged communications.</p> <p>5 MR. OSTER: Right.</p> <p>6 MR. BOLTON: I believe the lawsuit was</p> <p>7 filed in either October or November of 2 --</p> <p>8 THE WITNESS: Yeah, I think it was October</p> <p>9 or September. That's right. Because we filed two.</p> <p>10 BY MR. OSTER:</p> <p>11 Q So you filed in 2008?</p> <p>12 A Yes.</p> <p>13 Q You think around October of 2008 approximately, maybe</p> <p>14 September of 2008?</p> <p>15 A Yeah. It will be in all of the records.</p> <p>16 Q How did you come to the decision to file that</p> <p>17 lawsuit?</p> <p>18 A Well, we were very unhappy about the sheriff in</p> <p>19 Burnett County, Wisconsin holding a National Day of</p> <p>20 Prayer breakfast. And --</p> <p>21 MR. BOLTON: Again, I want to just -- she's</p> <p>22 doing fine, but I want to caution you not to get into</p> <p>23 discussions relating to communications with</p> <p>24 attorneys.</p> <p>25 THE WITNESS: And we couldn't file a</p>
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<p>1 faith-based incursions. They were concerned about --</p> <p>2 they liked all the best-selling books, Rich Dawkins</p> <p>3 mentions the foundation in his book.</p> <p>4 Q Do you think that the more the foundation is out</p> <p>5 there, the more that you're doing, then the more</p> <p>6 members you get?</p> <p>7 A I think that would be true for every group.</p> <p>8 Q And do you think that the more you're out there and</p> <p>9 the more that you're doing things, the more donations</p> <p>10 you receive?</p> <p>11 A Yes. I'm sure that's true.</p> <p>12 Q Do you think that you have received more members</p> <p>13 because of the National Day of Prayer lawsuit?</p> <p>14 A No. It has gotten very little attention from our</p> <p>15 members.</p> <p>16 Q How do you know that you have not received new</p> <p>17 members because of that lawsuit?</p> <p>18 A Well, I'm not sure we have received some, but it's</p> <p>19 not one that stands out.</p> <p>20 Q When did you decide to file the lawsuit?</p> <p>21 A I can't remember what year we filed it. Was it</p> <p>22 last -- two years ago?</p> <p>23 Q I believe --</p> <p>24 A Rich -- I have to ask.</p> <p>25 Q I believe the record would show 2008, beginning 2008.</p>	<p>1 lawsuit because we didn't have -- well, all of our</p> <p>2 members in Burnett County were terribly afraid. So</p> <p>3 we weren't able to redress that. And the sheriff was</p> <p>4 pointing out that this is a law and the president</p> <p>5 does it, so why shouldn't he be able to have a</p> <p>6 National Day of Prayer breakfast. And that's when we</p> <p>7 started to look at the question again.</p> <p>8 BY MR. OSTER:</p> <p>9 Q So when did you actually decide as an organization,</p> <p>10 hey, we're going to file this lawsuit?</p> <p>11 A I don't remember. Probably August.</p> <p>12 Q Did you discuss it as executive -- the executive</p> <p>13 committee discuss and make that decision, or was it</p> <p>14 just you and your husband?</p> <p>15 A No -- yes.</p> <p>16 Q Bad question. It was just you and your husband that</p> <p>17 made the decision to file the lawsuit?</p> <p>18 A Yes.</p> <p>19 Q And did you submit a press release to your</p> <p>20 constituencies, or did you somehow notify your</p> <p>21 members that you were filing a lawsuit?</p> <p>22 A We put out a press release, like we always do, once</p> <p>23 in a while a little late. I don't remember if we got</p> <p>24 this one out the week we filed it. But we put it --</p> <p>25 post it on-line. And I didn't -- I was understaffed.</p>

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<p>1 I didn't have time to fax it or send it out by mail</p> <p>2 to media.</p> <p>3 Q Would it be fair to say that before you filed the</p> <p>4 lawsuit, you had received a lot of complaints from</p> <p>5 your members regarding the National Day of Prayer?</p> <p>6 A For many years, ever since we started, yes.</p> <p>7 Q So that's an important issue to your membership?</p> <p>8 A Yes.</p> <p>9 Q What was your membership total in 2008?</p> <p>10 A I don't know. I can get that for you, but I would be</p> <p>11 guessing.</p> <p>12 Q All right.</p> <p>13 A I think it was like 11,000, 12,000, but -- we have</p> <p>14 all those records back at the office.</p> <p>15 Q How many lawsuits did you file in 2009?</p> <p>16 A I don't know. I would have to think about it. Let's</p> <p>17 see. I think we've only -- I think we've only filed</p> <p>18 one lawsuit. Is that right? Yes, I think only one.</p> <p>19 Q One lawsuit in 2009?</p> <p>20 A Yeah, we have lots of lawsuits going.</p> <p>21 Q Which one is that?</p> <p>22 A The visitor's center lawsuit in July.</p> <p>23 Q How many lawsuits did you file in 2008?</p> <p>24 A I would have to have my website in front of me to</p> <p>25 tell you that. It's all there.</p>	<p>1 Q So you mentioned you did a press release after the</p> <p>2 lawsuit was filed. Did you do any media on that</p> <p>3 lawsuit?</p> <p>4 A You mean did media call me?</p> <p>5 Q Right.</p> <p>6 A I'm sure I did, but it wasn't a huge -- huge one.</p> <p>7 It's not -- you never know what the media are</p> <p>8 interested in.</p> <p>9 Q You don't remember any specific media that called</p> <p>10 you?</p> <p>11 A We have media coverage on our website. I could look</p> <p>12 it up for you. I'm very busy. I'm talking with the</p> <p>13 media all the time and sending out press releases all</p> <p>14 the time, and I just couldn't -- you know, nothing</p> <p>15 stands to mind.</p> <p>16 THE VIDEOGRAPHER: Excuse me, we need to go</p> <p>17 off the record. We are off the record at 10:55 a.m.</p> <p>18 (Pause in proceedings.)</p> <p>19 THE VIDEOGRAPHER: We are back on the</p> <p>20 record at 10:56 a.m.</p> <p>21 BY MR. OSTER:</p> <p>22 Q So just generally, can you describe for me the</p> <p>23 fundraising activities that the organization does?</p> <p>24 What is the organization's fundraising strategy?</p> <p>25 A It's very simple and very minimal. We don't believe</p>
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<p>1 Q Approximately? What's your guess on the lawsuits you</p> <p>2 filed in 2008?</p> <p>3 A Somebody got a computer? I can look it up for you.</p> <p>4 Q No.</p> <p>5 A We filed two on the National Day of Prayer.</p> <p>6 MR. BOLTON: When we take a break, why</p> <p>7 don't we -- we'll talk --</p> <p>8 THE WITNESS: Yeah, if I had known you</p> <p>9 wanted that information, I would have had it handy,</p> <p>10 but --</p> <p>11 BY MR. OSTER:</p> <p>12 Q And for 2007 -- basically for 2004 through now.</p> <p>13 A Okay. I can get that for you.</p> <p>14 Q Okay. Now, in 2009, I'm looking at -- I'm trying to</p> <p>15 find out where does it list the dues you received?</p> <p>16 A It should be right at the top.</p> <p>17 Q Renewals and new members?</p> <p>18 A Um-hmm.</p> <p>19 Q Okay. How much were the membership dues in 2009?</p> <p>20 A The same. We haven't raised our prices.</p> <p>21 Q Okay. So there is no way I can tell by just looking</p> <p>22 at that number, 270,000, how many members you would</p> <p>23 have had because a member could give \$40, \$50, or</p> <p>24 \$1,000, right?</p> <p>25 A This is true.</p>	<p>1 in hounding our members who have already paid 40 or</p> <p>2 \$50. We send out two fundraising letters a year.</p> <p>3 And if someone doesn't like getting fundraising</p> <p>4 letters, we don't send it. We have something on our</p> <p>5 computer. And they all get the same thing. And in</p> <p>6 the fall or winter, which will be this</p> <p>7 November/December, we'll be sending one out. And we</p> <p>8 do a yearly review report with it.</p> <p>9 Q I'm not sure, you do two fundraising letters a year?</p> <p>10 A Um-hmm. We do a spring and a fall/winter.</p> <p>11 Q A spring and fall/winter.</p> <p>12 A And we promise our members we do not call you, we do</p> <p>13 not E-mail you, we don't solicit except with your</p> <p>14 membership renewal and we send those two fundraisers.</p> <p>15 That's it.</p> <p>16 Q You --</p> <p>17 A We really don't like to -- we don't like to get this</p> <p>18 kind of constant fundraising from other groups. We</p> <p>19 don't engage in it.</p> <p>20 Q Do you send out E-mails to your --</p> <p>21 A No.</p> <p>22 Q -- membership?</p> <p>23 A No. The only E-mail we've ever done, we made an</p> <p>24 exception in February, we created a bus sign, a way</p> <p>25 for someone to contribute to the bus sign. Everyone</p>

Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 42	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 44
<p>1 was asking us to put out bus signs after they did it</p> <p>2 in London. That's the only time we've ever done</p> <p>3 that, and it was an exception.</p> <p>4 Q During the year, can people donate on your website as</p> <p>5 well?</p> <p>6 A Yes, they can. We get -- most of the donations we</p> <p>7 get are unsolicited.</p> <p>8 Q How do you track the fundraising results?</p> <p>9 A We have -- they send back their little slip that</p> <p>10 indicates what they want the money to go for. And we</p> <p>11 hold onto it, and we total it up on an adding</p> <p>12 machine.</p> <p>13 Q So it's possible for you to -- you might not be able</p> <p>14 to do it now, but you guys have the records to be</p> <p>15 able to tell us how much money you brought in from</p> <p>16 the, let's say, spring of 2008 fundraising letter?</p> <p>17 A Yes, but I just gave you the one from fall 2008 and</p> <p>18 spring 2009 on legal. I read that to you.</p> <p>19 Q Right, but as far as --</p> <p>20 A Yes.</p> <p>21 Q So you actually -- on these documents you'll have a</p> <p>22 listing of how much money you brought in from the</p> <p>23 fall and spring?</p> <p>24 A Yes.</p> <p>25 Q Show me that again. Where is that?</p>	<p>1 discovery on that. But I have the letter. I can</p> <p>2 check.</p> <p>3 Q What do you mean you had discovery on that?</p> <p>4 A We gave to you all in discovery. You have it.</p> <p>5 Q Right, but I'm just asking if you remember --</p> <p>6 A I don't think so. I think we just --</p> <p>7 Q So the only fundraising you've done of the National</p> <p>8 Day of Prayer or the National Day of Prayer lawsuit</p> <p>9 was a one-sentence deal?</p> <p>10 A It was less than one sentence. It -- we listed all</p> <p>11 of our lawsuits, as we always do, so that if people</p> <p>12 like a particular lawsuit, then they can -- they know</p> <p>13 what we're doing, what they're contributing toward.</p> <p>14 It's called special projects so that people can help</p> <p>15 us pursue these particular projects. But we just</p> <p>16 list all of our -- usually list our ongoing</p> <p>17 litigation so that people know what we're doing. And</p> <p>18 if they like it, they can contribute. But we did not</p> <p>19 highlight it in any way. We said it in a sentence</p> <p>20 that the foundation does things that other groups do</p> <p>21 not do, including our National Day of Prayer</p> <p>22 challenge.</p> <p>23 Q So how did you make your membership aware of this</p> <p>24 lawsuit or the National Day of Prayer lawsuit?</p> <p>25 A Well, we have -- they all get our newspaper, unless</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 43	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 45
<p>1 A Oh, not on here. No, I read you -- I gave you the</p> <p>2 results for legal.</p> <p>3 Q What do you mean "legal"?</p> <p>4 A We usually include legal fund in the fundraising</p> <p>5 letter.</p> <p>6 Q Okay. But I mean just in general. The total amount</p> <p>7 of funds you would bring in from a certain</p> <p>8 fundraising letter.</p> <p>9 A Yes, we have that.</p> <p>10 Q Okay. And I don't suppose you know today how much</p> <p>11 money you brought in from the fall/winter 2008</p> <p>12 fundraising letter?</p> <p>13 A I don't have that information with me because I</p> <p>14 thought you would be only interested in the legal</p> <p>15 fund, since this is what concerns you.</p> <p>16 Q Well, I'm guessing that this fundraising letter you</p> <p>17 sent out in the fall/winter -- actually, let me ask</p> <p>18 this: Did the fall/winter 2008 fundraising letter</p> <p>19 mention the National Day of Prayer?</p> <p>20 A I think that it -- I don't know. One of them did.</p> <p>21 It was a half sentence in passing, we were giving a</p> <p>22 listing. I think it was the fall '08, yes.</p> <p>23 Q And then did the spring 2009 mention the National Day</p> <p>24 of Prayer lawsuit, the National Day of Prayer?</p> <p>25 A I don't think so. I don't think so, because we had</p>	<p>1 they choose not to. And we would have reported it in</p> <p>2 the newspaper.</p> <p>3 Q How often does that newspaper go out?</p> <p>4 A 10 times a year.</p> <p>5 Q Is there any other way in which you would have made</p> <p>6 your membership aware of this lawsuit?</p> <p>7 A Well, if -- the members can sign up to get our news</p> <p>8 releases. And most of them don't. But then they can</p> <p>9 get them E-mailed.</p> <p>10 Q And I assume did you put it on your website?</p> <p>11 A Yes.</p> <p>12 Q What is your understanding of prayer? What is it?</p> <p>13 A It's somebody who thinks that they can change the</p> <p>14 natural laws of the universe by begging a</p> <p>15 supernatural deity to do something for them.</p> <p>16 Q So prayer, in your understanding, is changing</p> <p>17 supernatural laws?</p> <p>18 A No. It's somebody who thinks that they can change or</p> <p>19 suspend the natural laws, change events for their</p> <p>20 betterment by asking a deity, a supernatural deity.</p> <p>21 Q Have you ever thought of prayer as being not</p> <p>22 necessarily believing they can change a supernatural</p> <p>23 event, but rather just trying to align oneself with</p> <p>24 God's will?</p> <p>25 A Well, I'm sure that's true for some believers.</p>



Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09	Page 46	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09	Page 48
<p>1 Q You understand there's a difference here. I think</p> <p>2 that prayer --</p> <p>3 A I'm not saying that they only pray for selfish</p> <p>4 reasons. I'm just saying that it's somebody who</p> <p>5 thinks there's a supernatural deity who's going to</p> <p>6 listen to their beseeching, you know, requests and</p> <p>7 maybe do something for them about it.</p> <p>8 Q Right. That's why I'm trying to get your</p> <p>9 understanding of what -- your understanding of prayer</p> <p>10 is. Because I kind of heard -- the first explanation</p> <p>11 you gave was that your -- they believe in some kind</p> <p>12 of supernatural --</p> <p>13 A Well, a god is a supernatural being.</p> <p>14 Q But that's going to -- the supernatural being is</p> <p>15 going to do something. Is that what you believe --</p> <p>16 A Well, that's usually what people pray about. They</p> <p>17 usually are asking for things. And that's true in</p> <p>18 all of the national prayer, Day of Prayer</p> <p>19 proclamations.</p> <p>20 Q So how would you compare meditation with prayer?</p> <p>21 A There might be a meditative effect. A prayer might</p> <p>22 have a calming effect on somebody who believes in it.</p> <p>23 I can see that much. But it doesn't point to</p> <p>24 anything outside their own brain, their own mind.</p> <p>25 Q You think meditation is different? In other words,</p>		<p>1 A We would like to stop an unconstitutional violation.</p> <p>2 Q Do you view this lawsuit as fitting within the</p> <p>3 overall objectives and goals of the organization?</p> <p>4 A Yes.</p> <p>5 Q Do you think this lawsuit serves the educational</p> <p>6 function of the foundation?</p> <p>7 A I think there's no question. Because a lot of people</p> <p>8 didn't know that -- I mean, we were letting them know</p> <p>9 that this is a relatively new violation and dating</p> <p>10 only to 1952.</p> <p>11 Q Do you think America has a Christian heritage?</p> <p>12 A America's government does not have a Christian</p> <p>13 heritage.</p> <p>14 Q So, like, when the Supreme Court ruled in I believe</p> <p>15 1892 -- you're probably familiar with this -- if you</p> <p>16 look through our volumes of history, it says that we</p> <p>17 are a Christian nation? Are you generally familiar</p> <p>18 with that line from the Holy Trinity case?</p> <p>19 A I think that that has been definitely overruled in</p> <p>20 practice by the Supreme Court.</p> <p>21 Q But as far as history, do you agree with their</p> <p>22 assessment that we do have a -- if you look at our</p> <p>23 history, we are religious people?</p> <p>24 A Actually, that's not true.</p> <p>25 Q What do you mean by that?</p>	
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09	Page 47	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09	Page 49
<p>1 if a person is just thinking and trying to collect</p> <p>2 their thoughts and make their thoughts in line with</p> <p>3 the universe, let's say, if they're just</p> <p>4 meditating --</p> <p>5 A I don't know how you would do that.</p> <p>6 Q -- is that different than prayer?</p> <p>7 A I'm sorry?</p> <p>8 Q Have you ever meditated?</p> <p>9 A I have taken yoga. I have, you know, tried to</p> <p>10 meditate.</p> <p>11 Q So do you think meditation is different than prayer?</p> <p>12 A Yes.</p> <p>13 MR. BOLTON: Joel, are you going to be</p> <p>14 going to a different topic at this point?</p> <p>15 MR. OSTER: I could be, yeah. This would</p> <p>16 be a good time to take a break.</p> <p>17 MR. BOLTON: Can we take a break?</p> <p>18 MR. OSTER: Yeah.</p> <p>19 THE VIDEOGRAPHER: We are off the record at</p> <p>20 11:04 a.m.</p> <p>21 (A break was taken.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record at 11:15 a.m.</p> <p>24 BY MR. OSTER:</p> <p>25 Q What are you trying to accomplish with this lawsuit?</p>		<p>1 A Well, the Ofeffer's (phonetic) book that --</p> <p>2 religion/church and state points out that very few</p> <p>3 people were going to church at the time the country</p> <p>4 was founded.</p> <p>5 And one of the reasons that the</p> <p>6 Christian -- what was it called, the Christian party</p> <p>7 in government wanted to stop delivery of the mail on</p> <p>8 Sunday. That was one they started crusading for in</p> <p>9 the 1820s, was because they thought that there were</p> <p>10 too many men going to bars to pick up -- you know,</p> <p>11 going -- after they picked up the mail. They weren't</p> <p>12 at church. So that's -- I mean, you would have to</p> <p>13 look at the history of demographics of church going,</p> <p>14 and you couldn't make a generalization like you did</p> <p>15 that I could agree with.</p> <p>16 Q Are you trying to stop presidents from calling the</p> <p>17 nation to pray?</p> <p>18 A I don't think that it's part of the duty of our</p> <p>19 elect -- highest elected official to urge Americans</p> <p>20 to pray as part of his job description, which is what</p> <p>21 the National Day of Prayer law requires.</p> <p>22 Q But are you trying to stop the president from calling</p> <p>23 the nation to pray?</p> <p>24 A On the first Thursday of May as part of his legal</p> <p>25 duties, yes.</p>	



Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 50	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 52
<p>1 Q So you don't care if the president calls the nation</p> <p>2 to pray on any other day besides the first Thursday</p> <p>3 of May?</p> <p>4 A I consider this different from anything else.</p> <p>5 Q Why?</p> <p>6 A Because he's mandated to do it by law.</p> <p>7 Q So you have no problem with the president calling the</p> <p>8 nation to pray on --</p> <p>9 A I do. I do.</p> <p>10 Q -- October 1st?</p> <p>11 A I do feel offended if I'm being told to pray by any</p> <p>12 public official. But this law is different because</p> <p>13 it's recurring, it's annual, he has to do it. I</p> <p>14 don't think most presidents would do this unless they</p> <p>15 were ordered to.</p> <p>16 Q Well, just take, for instance, George Washington when</p> <p>17 he issued a prayer proclamation that all Americans</p> <p>18 have a day of thanksgiving in prayer. Do you think</p> <p>19 that that type of proclamation from George Washington</p> <p>20 should not have been given?</p> <p>21 A Well, I would rather he hadn't done it. But the</p> <p>22 difference is that Congress urged him to do it; they</p> <p>23 didn't pass a law saying every president had to do it</p> <p>24 from now on.</p> <p>25 Q So you don't have a problem with George Washington's</p>	<p>1 MR. ROSENBERG: Let me just jump in, too,</p> <p>2 because we're asking a couple questions about the</p> <p>3 president. I just object to the form on the question</p> <p>4 because it had a double negative. I want to make</p> <p>5 sure that whatever question is asked, that we're all</p> <p>6 clear on what the question is for the record.</p> <p>7 MR. BOLTON: I will represent that the</p> <p>8 subject of the pending lawsuit is the National Day of</p> <p>9 Prayer as mandated by Congress. And that's the --</p> <p>10 that is the subject of the pending lawsuit.</p> <p>11 BY MR. OSTER:</p> <p>12 Q I do think it's fair for me to hear from you, since</p> <p>13 you're a plaintiff in the case, as to what you are</p> <p>14 trying to achieve by filing this lawsuit, what relief</p> <p>15 you are seeking. So I just want to make sure I</p> <p>16 understand that you are not trying to stop the</p> <p>17 president from issuing a prayer proclamation at any</p> <p>18 other time or occasion, other than the first Thursday</p> <p>19 in May?</p> <p>20 MR. BOLTON: I think that question calls</p> <p>21 for speculation, because we don't know the</p> <p>22 circumstances, the frequency, the regularity. I</p> <p>23 mean, I don't know that we can answer that question</p> <p>24 in a speculative form.</p> <p>25</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 51	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 53
<p>1 proclamation when he asked the nation to pray?</p> <p>2 A I don't like the fact that he did it. But, of</p> <p>3 course, I wasn't around then.</p> <p>4 Q But if Obama were to do that now?</p> <p>5 A I would feel that he was overstepping the decorum of</p> <p>6 the office. I think that he should take the advice</p> <p>7 of President Thomas Jefferson who famously noted that</p> <p>8 only civil powers have been given to presidents and</p> <p>9 none to direct the conscience of their constituents.</p> <p>10 And that was Thomas Jefferson doing a reading on the</p> <p>11 First Amendment and what it meant with the</p> <p>12 establishment clause. And I think Thomas Jefferson</p> <p>13 was right.</p> <p>14 Q So I understand your position and what you're asking</p> <p>15 for in this case, you are not asking the president</p> <p>16 not to give a prayer proclamation outside of any</p> <p>17 context other than the first Thursday in May?</p> <p>18 A Well, I --</p> <p>19 MR. BOLTON: Let me interject here to the</p> <p>20 extent that a lot of this is calling, I think, for</p> <p>21 legal opinions by the witness. She's not a lawyer,</p> <p>22 in terms of the relief that is requested or</p> <p>23 appropriate. I mean, I'm not sure that trying to get</p> <p>24 a legal opinion from the witness is appropriate. And</p> <p>25 for that reason, I object.</p>	<p>1 BY MR. OSTER:</p> <p>2 Q I just need to know what you're asking for in this</p> <p>3 lawsuit. You filed the complaint. What are you</p> <p>4 seeking?</p> <p>5 A We're asking that the president stop filing National</p> <p>6 Day of Prayer proclamations.</p> <p>7 Q In general, any time of the year?</p> <p>8 A Well, the National Day of Prayer proclamation is by</p> <p>9 law the first Thursday in May.</p> <p>10 Q So, again, so I understand, you are not asking the</p> <p>11 president to not issue a prayer proclamation any</p> <p>12 other time other than the National Day of Prayer, the</p> <p>13 first Thursday in May?</p> <p>14 MR. BOLTON: I will represent that that is</p> <p>15 the subject of the lawsuit, and that is the relief</p> <p>16 that would be requested as part of this lawsuit. If</p> <p>17 you are asking whether or not we would go beyond that</p> <p>18 to your hypothetical, that's not the subject of the</p> <p>19 lawsuit. But that is not to say that depending on</p> <p>20 what the circumstances were, that we're agreeable to</p> <p>21 that situation. I'm simply saying that is</p> <p>22 speculative, and we would have to know the</p> <p>23 circumstances.</p> <p>24 BY MR. OSTER:</p> <p>25 Q You may answer.</p>

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<p>1 A What?</p> <p>2 Q You may answer.</p> <p>3 A Well, you're going to have to read the question back.</p> <p>4 (Previous question read back.)</p> <p>5 THE WITNESS: Is that another double</p> <p>6 negative here? Read it again.</p> <p>7 (Previous question read back.)</p> <p>8 THE WITNESS: Well, this lawsuit is dealing</p> <p>9 with the National Day of Prayer proclamations, which</p> <p>10 is the first Thursday in May.</p> <p>11 BY MR. OSTER:</p> <p>12 Q So if the president issued a prayer proclamation for</p> <p>13 June 1, your lawsuit is not seeking to stop that from</p> <p>14 happening, correct?</p> <p>15 MR. BOLTON: Calls for speculation.</p> <p>16 Objection.</p> <p>17 THE WITNESS: Our lawsuit is dealing with a</p> <p>18 statute ordering the president to issue prayer</p> <p>19 proclamations urging Americans to unite in prayer on</p> <p>20 the first Thursday in May. There's no statute</p> <p>21 requiring the president to do that on June 1st. We</p> <p>22 assume the president's not going to do that on</p> <p>23 June 1st.</p> <p>24 BY MR. OSTER:</p> <p>25 Q Are you familiar with the time when President Bush</p>		<p>1 pray?</p> <p>2 A No.</p> <p>3 Q Are you aware of anyone within your membership -- are</p> <p>4 you aware of whether anyone from your membership has</p> <p>5 ever been forced to pray due to these proclamations?</p> <p>6 A No, but they were very, very frustrated by them.</p> <p>7 Q Do you think it's a good idea that Congress starts</p> <p>8 its sessions with prayer?</p> <p>9 A No, nor did James Madison.</p> <p>10 Q But do you recognize this practice has been going on</p> <p>11 for a long time in America?</p> <p>12 A Yes.</p> <p>13 MR. BOLTON: Just so -- which practice are</p> <p>14 we referring to?</p> <p>15 MR. OSTER: The practice of starting</p> <p>16 Congress with prayer.</p> <p>17 MR. BOLTON: The legislative prayer. Okay.</p> <p>18 BY MR. OSTER:</p> <p>19 Q Do you think for that reason it should continue?</p> <p>20 A For what reason?</p> <p>21 Q The fact that prayer -- the practice of prayer before</p> <p>22 the legislative session that's been going on for a</p> <p>23 long time, do you think for that reason it should</p> <p>24 continue?</p> <p>25 A No. And I always think that's a very bad reason to</p>	
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<p>1 called the nation to pray after 9/11?</p> <p>2 A Yes.</p> <p>3 Q And is your lawsuit seeking to stop those type of</p> <p>4 instances where the president calls the nation to</p> <p>5 pray?</p> <p>6 A No. But we thought that was highly inappropriate,</p> <p>7 and we did issue a press release about it.</p> <p>8 Q Why did you think it was inappropriate?</p> <p>9 A Because it was -- because religion was the problem</p> <p>10 with 9/11, and then here was the president giving us</p> <p>11 more religion. We didn't need more religion. And it</p> <p>12 also excluded all the Americans who are not religious</p> <p>13 from participating in this mourning of what happened</p> <p>14 on 9/11, which involved people of all religions and</p> <p>15 no religion who lost their lives or whose families</p> <p>16 were disrupted. And it was done in a Christian</p> <p>17 setting, which was, I think, insensitive.</p> <p>18 Q How was it done in a Christian setting?</p> <p>19 A It was at the cathedral, the national cathedral.</p> <p>20 Q How long have you been aware of the National Day of</p> <p>21 Prayer?</p> <p>22 A I think since we started the group. '76, '77, '78.</p> <p>23 Q And I assume --</p> <p>24 A I may have been aware before then. I'm not sure.</p> <p>25 Q Have any of those prayer proclamations caused you to</p>		<p>1 do anything. If we were going to do something just</p> <p>2 because it was a tradition, slavery would still be</p> <p>3 around.</p> <p>4 Q So you disagree with the Supreme Court on that issue</p> <p>5 of legislative prayer?</p> <p>6 MR. BOLTON: Well, objection. You asked</p> <p>7 her what her view was. You did not ask her for a</p> <p>8 legal opinion. And if you ask her for a legal</p> <p>9 opinion, I will object.</p> <p>10 BY MR. OSTER:</p> <p>11 Q You may answer.</p> <p>12 A The Supreme Court has not addressed congressional</p> <p>13 prayers.</p> <p>14 Q Again, I --</p> <p>15 A There's no decision to --</p> <p>16 Q I know you're not an attorney, but --</p> <p>17 A Marsh did not talk about the prayers opening</p> <p>18 Congress.</p> <p>19 Q But you would agree -- I know you're not an attorney,</p> <p>20 so this is not, you know -- you would agree that</p> <p>21 Marsh dealt with legislative prayer; would you not?</p> <p>22 A Yes.</p> <p>23 Q And since you are involved in this area, I assume you</p> <p>24 understand that the reason the Supreme Court gave in</p> <p>25 Marsh was because it had been in practice in the</p>	

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<p>1 history of the United States to allow for that kind</p> <p>2 of thing to happen?</p> <p>3 MR. BOLTON: I'll object. That certainly</p> <p>4 is part of the Court's reasoning. But the Court also</p> <p>5 concluded that the legislative prayer did not have</p> <p>6 the effect of actually being religious as it was</p> <p>7 being used. So to the extent that we're going to</p> <p>8 discuss legal precedent with the witness, I mean, I</p> <p>9 think I have to be involved in that discussion also.</p> <p>10 BY MR. OSTER:</p> <p>11 Q You may answer.</p> <p>12 A Do you want to give the question again?</p> <p>13 Q Yeah. So do you disagree with the Supreme Court's</p> <p>14 rationale in Marsh that the practice of legislative</p> <p>15 prayer should continue because it's an historical</p> <p>16 practice?</p> <p>17 MR. BOLTON: Object to the form of the</p> <p>18 question.</p> <p>19 BY MR. OSTER:</p> <p>20 Q You may answer.</p> <p>21 A Well, that was part of the reasoning. And --</p> <p>22 Q You disagree with it?</p> <p>23 A I do disagree with that part of the reasoning. I</p> <p>24 think that's very bad reasoning. As I said, because</p> <p>25 under that kind of logic, then you could excuse</p>	<p>1 entity?</p> <p>2 A Not that I know of.</p> <p>3 Q So then I want to ask a couple questions here</p> <p>4 regarding what the task force -- I'm sorry, what the</p> <p>5 foundation has done to protest the National Day of</p> <p>6 Prayer. So you said that the first recollection you</p> <p>7 had was sometime in the mid-'80s. Could you expound</p> <p>8 upon --</p> <p>9 A Well, I wasn't part of the staff until 1985.</p> <p>10 Q So what was your first recollection of what the</p> <p>11 foundation did to protest the National Day of Prayer?</p> <p>12 A We reported it in Free Thought Today. I did some</p> <p>13 press releases in the '80s about it, quoting Thomas</p> <p>14 Jefferson and his letter saying that he didn't think</p> <p>15 the president had the power to direct the conscience</p> <p>16 of his constituents and why he refused to issue any</p> <p>17 days of thanksgiving or prayer. I researched that</p> <p>18 letter, and we took phone calls and received</p> <p>19 clippings and letters and have ever since from our</p> <p>20 members who were distressed by it.</p> <p>21 Q Did you -- did the organization ever stage or plan a</p> <p>22 protest of the National Day of Prayer?</p> <p>23 A We didn't, but our individual members have, and some</p> <p>24 of their local groups.</p> <p>25 Q And --</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 59	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 61
<p>1 anything, including slavery, because it's a</p> <p>2 long-standing practice.</p> <p>3 Q So do you equate calling the nation to pray with</p> <p>4 slavery?</p> <p>5 A No, although some of our members think that religion</p> <p>6 is the enslavement of the mind.</p> <p>7 Q So you do?</p> <p>8 A Some of our members believe that.</p> <p>9 Q I want to go back to -- when did you first become</p> <p>10 aware of the National Day of Prayer?</p> <p>11 A As I previously stated, certainly by '76, '77, '78.</p> <p>12 And I might have been aware of it in high school. I</p> <p>13 don't remember.</p> <p>14 Q What is your earliest recollection in 1976 or soon</p> <p>15 thereafter of efforts by the Freedom From Religion</p> <p>16 Foundation to counter the National Day of Prayer?</p> <p>17 A We started doing a lot more in the '80s, 1980s. And</p> <p>18 I didn't join the staff until '85. And I</p> <p>19 specifically remember receiving press about the</p> <p>20 National Day of Prayer Task Force.</p> <p>21 Q What did you receive?</p> <p>22 A Well, we reported it in Free Thought Today about</p> <p>23 their, you know, participation in this National Day</p> <p>24 of Prayer festivities.</p> <p>25 Q Have you ever confused a task force with a government</p>	<p>1 A We urged our members to do that.</p> <p>2 Q How did you do that?</p> <p>3 A Well, through Free Thought Today and direct contact</p> <p>4 with them when they would call or write about</p> <p>5 problems in their area.</p> <p>6 Q And did your members do this?</p> <p>7 A Many of them did, those who are activists.</p> <p>8 Q Based on my review of the history of the foundation,</p> <p>9 based on the documents you've given us, I know you</p> <p>10 filed two lawsuits here recently against the National</p> <p>11 Day of Prayer. And then you have done some other</p> <p>12 recording of complaints and urging people to do</p> <p>13 protests. Have you done anything else, besides the</p> <p>14 two lawsuits and recording complaints and urging</p> <p>15 people to protest National Day of Prayer events, to</p> <p>16 combat the National Day of Prayer?</p> <p>17 A Did you look at our discovery? I mean --</p> <p>18 Q That's what I'm asking you.</p> <p>19 A It's boxes and boxes of what we've done and</p> <p>20 correspondence and press releases and reporting in</p> <p>21 Free Thought Today, the activism of our members</p> <p>22 encouraging our members to protest it. Then starting</p> <p>23 to track the National Day of Prayer Task Force and</p> <p>24 its interaction with the government, which really</p> <p>25 stepped up after '88. And that's when we -- our</p>

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1 complaints stepped up. It became much more of a  
2 splashy thing for the National Day of Prayer.  
3 Q What do you mean by that?  
4 A It was a big deal everywhere, and it was much more  
5 overt and we received many more complaints as a  
6 result from our membership. And people were much  
7 more aware of it because it was on the same date  
8 every year and because it was being organized by the  
9 National Day of Prayer Task Force. And we would  
10 get -- you know, we would start getting calls in  
11 March or April, and they would continue on afterward.  
12 In the old days, everything came in by mail. And so  
13 people would be sending clips beforehand about things  
14 going on in their area, and then they would be  
15 sending them afterward. So we might start getting  
16 complaints in March, and they might continue through  
17 the summer.  
18 Before the Internet things moved at a  
19 slower pace, so we were dealing with it for a long  
20 time. And constantly asking us what could we do to  
21 stop this violation. And being very frustrated and  
22 stressed about it because what do you do when there's  
23 a national law ordering the president to issue this  
24 proclamation and you know it's going to recur every  
25 single year and it's percolating down to all the

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1 governors and the mayors and the county execs, and  
2 they're all holding events in capitols and city halls  
3 and county buildings. And it's very splashy. A very  
4 splashy violation, very impossible to avoid every  
5 year.  
6 MR. BOLTON: Do you have -- I don't know if  
7 there's any other question pending at this point.  
8 MR. OSTER: No, I don't think I had another  
9 question pending. Do you want to take another break?  
10 MR. BOLTON: Sure. How are we doing on  
11 time?  
12 THE VIDEOGRAPHER: We are off the record at  
13 11:35 a.m.  
14 (A lunch recess was taken.)  
15 THE VIDEOGRAPHER: We are back on the  
16 record at 12:28 p.m.  
17 BY MR. OSTER:  
18 Q What is the National Day of Reason?  
19 A That's an idea that some secular people have come up  
20 with that that's what we should really have, is a  
21 National Day of Reason, not a National Day of Prayer.  
22 A National Day of Reason wouldn't violate  
23 constitution, and it would promote something useful.  
24 Q Who came up with the idea?  
25 A I don't know.

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1 Q Was it your organization?  
2 A We might have. It's been floating around a long  
3 time.  
4 Q Does your organization promote it?  
5 A We have.  
6 Q And why do you promote it?  
7 A As an idea of what would be appropriate for the  
8 government to do.  
9 Q How is a National Day of Reason different than a  
10 National Day of Prayer?  
11 A Well, prayer -- we don't think that -- you know,  
12 "Nothing Fails Like Prayer" is the bumper sticker we  
13 have around our office. We don't believe in prayer.  
14 Our members are rooted in the natural world, and they  
15 don't think there is a deity who answers prayer.  
16 And furthermore, our group exists to  
17 make sure that religion stays out of government.  
18 There's no god in our Constitution, they didn't pray  
19 at the constitutional convention that adopted it.  
20 There shouldn't be prayer in government. And we  
21 don't think the president should be dictating to  
22 constituents that they should pray or what they  
23 should pray about, which I think is almost as  
24 offensive.  
25 Q Now, a couple points I want to follow up on what you

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1 just said. You said that you don't believe that  
2 there is a deity who answers prayer. So does your  
3 organization believe that there is a deity, just that  
4 doesn't answer prayer or --  
5 A No, I don't. And most of our members do not believe  
6 in any god or gods. But there are a few deists in  
7 our group.  
8 Q So do you view the National Day of Reason as an  
9 alternative to the National Day of Prayer?  
10 A It's a protest of the National Day of Prayer.  
11 Q And I believe in your view, prayer is unreasonable?  
12 A The idea that there's efficacy in prayer is  
13 unreasonable.  
14 Q So if there were no National Day of Prayer, would you  
15 still promote the National Day of Reason?  
16 A It was suggested as a protest of the National Day of  
17 Prayer. I don't think it would have been suggested  
18 otherwise, if there hadn't been religion in  
19 government. But it would be constitutional.  
20 Q And some municipalities, am I correct, have had a  
21 National Day of Reason?  
22 A I have not tracked that. I mean, we've reported it  
23 in the paper, but I couldn't tell you which ones have  
24 or haven't. I think there's a few mayors or city  
25 councils that might have signed proclamations, but I



<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 66</p> <p>1 don't know which. It hasn't taken on.  2 Q Now, what is your view of what was referenced in the  3 Declaration of Independence when it says we are  4 endowed by our creator with certain unalienable  5 rights?  6 A Well, that was written by Thomas Jefferson who was a  7 deist, but it's not the founding document of our --  8 it's not the Constitution.  9 Q But do you believe it is a founding document of our  10 country?  11 A Well, it was the document in which we declared our  12 independence from Great Britain, yes.  13 Q And it references a "creator of mankind," does it  14 not?  15 A It's a deistic idea, yes, because the Declaration of  16 Independence is profoundly rational and is not based  17 on the Bible.  18 Q But just so I understand, it is based on a thought or  19 a principle that there was a creator, correct?  20 A I don't think it's based on that thought, no.  21 Q So what is your interpretation of what's meant by  22 saying we are endowed by our creator with unalienable  23 rights?  24 A Well, when you read the Declaration of Independence,  25 it doesn't talk about sovereignty being in a creator.</p>	<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 68</p> <p>1 A Well, I would, again, point out that most people  2 during the revolutionary era were not church going.  3 I don't know whether there were any surveys about how  4 they identified.  5 Q But you would agree that -- well, follow up on that  6 statement. Would you agree that even a larger  7 percentage of American people claim a religious  8 heritage beyond just being Christian?  9 A I guess I'm having trouble with that religious  10 heritage. I don't know what that's got to do with  11 anything.  12 Q Let's define religious --  13 A I don't know what they can claim about their  14 heritage.  15 Q I'm asking you about your understanding of what the  16 American people identify with. And would you not  17 agree that a large percentage of our population  18 identify with a religious heritage, whether that be  19 they hold religious beliefs or they believe in a god  20 or they go to church, whatever --  21 A Most people don't go to church in this country. A  22 majority do not go to church on any given Sunday. In  23 my understanding, it's about 70 percent of the  24 population believes in a personal god. And that's  25 way down. I can speak to the statistics today. I</p>
<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 67</p> <p>1 It talks about the ability of people to create their  2 own government.  3 Q But it definitely talks about there was a creator of  4 rights, correct?  5 A In passing. And Thomas Jefferson was a deist. But I  6 think if he had been born a century later, he would  7 not have been. He was preDarwin. He cut up the  8 Bible and took out all the passages in it that he  9 thought were wrong about Jesus, all of the  10 supernatural passages. And he made very many strong  11 statements that were antibiblical. He was not a  12 Bible believer or a Christian.  13 Q Would you agree that there is a significant amount of  14 our population -- or the American people that have a  15 Christian heritage?  16 A What do you mean by that, a Christian heritage? Do  17 you mean their family used to be Christian?  18 Q Either they're Christian or their families were  19 Christian. In their heritage there are Christian  20 beliefs.  21 A Well, I think that there are a lot of people in this  22 country who identify as Christian. I would agree  23 with that. I can't speak to their heritage.  24 Q And you would agree that that's been true throughout  25 our nation's history, correct?</p>	<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 69</p> <p>1 don't know about what they think about their  2 heritage.  3 Q So I'm asking again, your understanding, your  4 opinion, do you think that a large percentage of  5 American people claim to have a religious heritage?  6 A I don't know what they claim about their religious  7 heritage. I can only speak to what they're telling  8 pollsters about their beliefs.  9 Q And I believe you testified that that's 70 percent  10 believe in a personal god?  11 A About, yeah. That was the American Religious  12 Identification Survey, which means 30 percent do not  13 believe in a personal god or a god at all. That's a  14 lot of people.  15 Q I have no more questions.  16 EXAMINATION  17 BY MR. ROSENBERG:  18 Q Good afternoon, Ms. Gaylor. My name is Brad  19 Rosenberg. As we mentioned at the beginning of this  20 deposition, I'm an attorney for the United States  21 Department of Justice, and I'm here representing  22 President Barack Obama and White House press  23 secretary, Robert Gibbs. How are you doing today?  24 A Fine, thank you.  25 Q Holding up okay in the deposition?</p>



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1 A I hope so.

2 Q I want to go back to a couple of topics that you

3 discussed with Mr. Oster this morning, particularly

4 the issue of your awareness of the existence of the

5 National Day of Prayer. My recollection is that

6 you've been aware of the existence of a National Day

7 of Prayer for quite some time?

8 A Yes.

9 Q You nodded your head yes. When did FFRF first

10 consider bringing a lawsuit involving the National

11 Day of Prayer?

12 A We were asked to take it to court many times by our

13 members over the years. And we just weren't sure,

14 you know, how to do that. And we just -- it became

15 an increasingly -- a problem over the years with so

16 many members looking to us for leadership on this

17 issue and saying that they thought it was so terribly

18 harmful to the notion of a secular government, that

19 our president had to proclaim a National Day of

20 Prayer and they were constantly being told that they

21 had to pray.

22 I mean, the presidents almost always

23 used the words "all," "every," "each American." They

24 tell us what to pray about. This is deeply, deeply

25 offensive to our members on a personal level and also

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1 because they support the separation of church and

2 state.

3 Q Let me go back for a minute. And I want to emphasize

4 at the outset that I'm not asking for any information

5 that you may have shared with your counsel. And, you

6 know, to the extent that my questions can be

7 construed that way, that's not the type of

8 information I'm looking for.

9 But you indicated that you've received

10 complaints from members for many years, but you

11 weren't sure how to -- how to bring a lawsuit. What

12 did you mean by that?

13 A Well, we have so many different cases, and we can't

14 take everything. And, you know, we just have to

15 budget for our litigation. And our attention was

16 always turned to something else by some other legal

17 emergency, I suppose.

18 Q Was there anything about bringing the National -- a

19 lawsuit against the National Day of Prayer or

20 challenging the National Day of Prayer that struck

21 you as problematic?

22 MR. BOLTON: Again, I'll object certainly

23 to the extent that that calls for any attorney/client

24 communications.

25 THE WITNESS: The biggest problem we always

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1 have in the lawsuit is finding an attorney with the

2 background to take a lawsuit and finding an attorney

3 who is willing to do it and who is free to take it,

4 not -- not charging us nothing, but available.

5 BY MR. ROSENBERG:

6 Q Was that a problem for bringing -- let me back up for

7 a second. Was that ever an issue when the Freedom

8 From Religion Foundation was first considering

9 bringing a lawsuit regarding the National Day of

10 Prayer?

11 A No.

12 Q Okay. So were there any other issues involving a

13 lawsuit regarding the National Day of Prayer that

14 were problematic from --

15 A Not really.

16 Q You mentioned that FFRF's members have asked FFRF to

17 bring a lawsuit for many years?

18 A And they've asked us to do anything we could about

19 it. I mean, what can -- they would ask for advice

20 about what they could do, as well as always wanting

21 us to do more. And it was like a recurring violation

22 that it just -- it was like feeling so impotent to

23 really get at the root of the problem, which is that

24 there is a mandate by Congress to the president to

25 issue a National Day of Prayer, and that that had

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1 created a whole series of other violations as well,

2 and a perception in the public's mind that it was

3 appropriate for their government to tell them to

4 pray.

5 Q It's fair to say, I think you would agree, that many

6 of FFRF's members dislike the National Day of Prayer?

7 A They feel very, very strongly that it's injurious to

8 them that their freedom of conscience is being

9 flouted by the government, they are being told

10 they're second-class citizens, they are outsiders.

11 They don't pray, and yet all Americans are supposed

12 to pray. And it's just -- I mean, metaphorically

13 it's kind of like being told to go to church by your

14 president, told you're not the right person because

15 you're not religious.

16 Q Have FFRF members looked to FFRF to do something

17 about this problem?

18 A They -- our members and members of the public are in

19 continual communication with us about violations all

20 over the country, big and small. And this is a

21 recurring violation, one that we've heard about every

22 year, all spring through the summer.

23 Q Do you recall when you were first approached by an

24 FFRF member involving the National Day of Prayer?

25 A It would have been in the '70s after we started.

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<p>1 Q Do you recall who --</p> <p>2 A Probably by phone.</p> <p>3 Q Do you recall who that individual might have been?</p> <p>4 A I don't.</p> <p>5 Q Do you recall any specific conversations from the</p> <p>6 1970s involving the National Day of Prayer?</p> <p>7 A I don't. But I wasn't on staff. We didn't actually</p> <p>8 have a paid staff in the early '70s. It was when I</p> <p>9 became a staff member that I started doing that.</p> <p>10 Q When was the first specific conversation that you</p> <p>11 recall having with someone about the National Day of</p> <p>12 Prayer, approximately?</p> <p>13 A I don't have phone logs from the 1980s. We would</p> <p>14 have been getting phone calls, we would be getting</p> <p>15 clippings with notes, you know, about the National</p> <p>16 Day of Prayer proclamation and the local observances,</p> <p>17 for example, and coverage of the presidential</p> <p>18 proclamations and people saying, how can this happen.</p> <p>19 And then we researched it and found</p> <p>20 out about the law. And, you know, we just got</p> <p>21 incessant phone calls and letters at the time of the</p> <p>22 National Day of Prayer proclamation.</p> <p>23 Q Do you recall --</p> <p>24 A -- to do something about.</p> <p>25 Q Do you recall if anyone in the 1980s asked FFRF to</p>	<p>1 them not to issue prayer and Bible proclamations, for</p> <p>2 example. So that was a big deal for our office.</p> <p>3 And we put things in Free Thought</p> <p>4 Today. We went back into history and put in the</p> <p>5 wording of Thomas Jefferson, for example, and warned</p> <p>6 people about the National Day of Prayer in advance.</p> <p>7 We covered what happened at the National Day of</p> <p>8 Prayer proclamations federally and at the state level</p> <p>9 in our newspaper.</p> <p>10 And then we covered a lot of and we</p> <p>11 still cover a lot of our members' individual actions.</p> <p>12 And those increased after '88 when the law became</p> <p>13 fixed, when the date became fixed and the National</p> <p>14 Day of Prayer Task Force became so terribly active.</p> <p>15 Q So the fact that the law became fixed in 1988 allowed</p> <p>16 Freedom From Religion Foundation to get its word out</p> <p>17 regarding the National Day of Prayer on a regular</p> <p>18 basis as well; did it not?</p> <p>19 A Well, I wouldn't look at it that way. It increased</p> <p>20 our problems with violations of separation of church</p> <p>21 and state; it increased the public awareness, our</p> <p>22 members' awareness, that the president was dictating</p> <p>23 to them that they should pray on this day for the</p> <p>24 whole day, they should unite in prayer with their</p> <p>25 community and their other people, that that was an</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 75	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 77
<p>1 sue to challenge the National Day of Prayer?</p> <p>2 A Well, I think that Catherine Fahringer did. She was</p> <p>3 one -- she became an officer of our group. And she</p> <p>4 was in San Antonio. And there's a lot of discovery</p> <p>5 on her activism, and she was one of our officers.</p> <p>6 Q I remember seeing that.</p> <p>7 A Yes. And she would go to monitor the prayer</p> <p>8 breakfasts and picket at city hall. She was very</p> <p>9 impatient and really wanted to make a difference.</p> <p>10 She wanted to stop this violation. So certainly</p> <p>11 Catherine would have. And my mother and I talked</p> <p>12 about it.</p> <p>13 Q What did you --</p> <p>14 A As a --</p> <p>15 Q I'm sorry. Go ahead.</p> <p>16 A Talked about that it's something we would like to try</p> <p>17 to do someday.</p> <p>18 Q What specifically -- do you recall anything else</p> <p>19 about what you discussed with your mother regarding</p> <p>20 the National Day of Prayer back in the 1980s?</p> <p>21 A Well, we discussed the way that the National Day of</p> <p>22 Prayer proclamations were percolating down to the</p> <p>23 governors and to the mayors. And in the late '80s we</p> <p>24 did a huge campaign -- we were a very tiny office --</p> <p>25 and sent out over 30,000 letters to mayors asking</p>	<p>1 order from the president. And then he would tell</p> <p>2 them what to pray about. And our members really,</p> <p>3 really feel affronted at this, because it's like</p> <p>4 telling them they are supposed to believe in a god</p> <p>5 and they're wrong because they don't. And they're</p> <p>6 supposed to pray to that god, and they're supposed to</p> <p>7 pray to God about particular things that's on the</p> <p>8 president's agenda. It really is quite an affront to</p> <p>9 someone who's not religious.</p> <p>10 Q We'll get to the specifics of some of the</p> <p>11 proclamations in a few minutes, but there are no</p> <p>12 presidential proclamations that direct people to pray</p> <p>13 all day, are there?</p> <p>14 A Well, but it's a fixed day. It's the National Day of</p> <p>15 Prayer for 24 hours.</p> <p>16 Q I believe you said that the president would tell</p> <p>17 people to pray all day. There are no proclamations</p> <p>18 that tell people to pray all day, are there?</p> <p>19 A Well, yes. Well, actually, Jimmy Carter -- should I</p> <p>20 get it out -- does --</p> <p>21 Q I'll take a look at that.</p> <p>22 A -- make biblical reference to that fact. And I think</p> <p>23 so does Regan. Let's see, are these out of order?</p> <p>24 And they all say every citizen, just looking at 1983,</p> <p>25 Ronald Regan. But there's more than one that cites</p>

Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 78	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 80
<p>1 the Bible on this.</p> <p>2 Q That actually wasn't my question. My question was,</p> <p>3 are you aware of a proclamation --</p> <p>4 A I am.</p> <p>5 Q -- that tells American citizens to pray all day?</p> <p>6 A I -- well, just take -- give me a minute. I have it</p> <p>7 in the finding of facts. And I just can't remember</p> <p>8 it. It's the part where the Bible says that we</p> <p>9 should be praying incessantly. And Jimmy Carter says</p> <p>10 it somewhere, and so does Ronald Regan, I think.</p> <p>11 Q I think we could agree that the proclamations speak</p> <p>12 for themselves and we can take a look at that later.</p> <p>13 A Well, it's in there. And they do tell us we're</p> <p>14 supposed to -- you know, for example, 1979 Jimmy</p> <p>15 Carter says, "I ask all Americans to join with me on</p> <p>16 that day to recommit ourselves to God." I mean,</p> <p>17 these are not even just telling you to pray.</p> <p>18 "Recommit yourself to God."</p> <p>19 If you are Godless, if you are -- you</p> <p>20 don't believe in a God, what does this proclamation</p> <p>21 say to you? It says you -- you're wrong, and I'm</p> <p>22 your president, and I'm telling you you're supposed</p> <p>23 to pray. And it also says -- usually they say, you</p> <p>24 know, unite with other Americans. It often tells you</p> <p>25 in your churches, in your communities.</p>	<p>1 her?</p> <p>2 A I certainly did not go into any detail with her about</p> <p>3 it. She probably just expressed a wish that we could</p> <p>4 do -- do something like that someday.</p> <p>5 Q When was the first time that you recall having a</p> <p>6 detailed conversation about the possibility of a</p> <p>7 lawsuit with someone regarding the National Day of</p> <p>8 Prayer?</p> <p>9 A Details, it was after our frustration with the</p> <p>10 Burnett County Sheriff in Wisconsin. It was kind of</p> <p>11 like the last straw for us, that really we were just</p> <p>12 tilting at windmills to do anything except sue at</p> <p>13 this point.</p> <p>14 Q Prior to that time, did the FFRF executive committee</p> <p>15 ever discuss the possibility of filing a lawsuit</p> <p>16 regarding the National Day of Prayer?</p> <p>17 A I'm sure we did. I mean, it was on the laundry list</p> <p>18 of things that we might do someday. But I don't</p> <p>19 remember. I don't know.</p> <p>20 Q Are there any minutes from executive committee</p> <p>21 meetings that reflect discussion of a lawsuit</p> <p>22 involving the National Day of Prayer?</p> <p>23 A I don't think so. I mean, I don't think in that</p> <p>24 detail.</p> <p>25 Q What about the board of directors? Would that have</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 79	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 81
<p>1 It leaves us out cold, and it also</p> <p>2 tells us that we are the -- we are the wrong</p> <p>3 religion, we're not true Americans. It says</p> <p>4 direct -- also he told us to fast. That is all day.</p> <p>5 Jimmy Carter, 1980.</p> <p>6 Q But he didn't say to pray all day, did he?</p> <p>7 A Well, if you want to give me five minutes, I'll find</p> <p>8 it.</p> <p>9 Q Why don't we go back to that.</p> <p>10 A Okay.</p> <p>11 Q Do you consider atheism to be a religion?</p> <p>12 A No.</p> <p>13 Q What about agnosticism?</p> <p>14 A No.</p> <p>15 Q Let's go back for a moment. I think you mentioned</p> <p>16 Catherine Fahringer?</p> <p>17 A Fahringer.</p> <p>18 Q She was an FFRF member who was very opposed to the</p> <p>19 National Day of Prayer. Did she approach you about</p> <p>20 filing a lawsuit over the National Day of Prayer?</p> <p>21 A I -- you know, I think that she wanted us to do</p> <p>22 everything we could to stop it. And obviously</p> <p>23 litigation was the final remedy. I mean, we've done</p> <p>24 everything else but.</p> <p>25 Q Did you discuss the possibility of a lawsuit with</p>	<p>1 any discussion?</p> <p>2 A I would have to go and look. I mean, when people</p> <p>3 make suggestions, we write it down and put it in the</p> <p>4 minutes.</p> <p>5 Q Has it ever come up at FFRF's conventions, other than</p> <p>6 the last convention about which you previously</p> <p>7 testified?</p> <p>8 A Well, that's when we have our meetings. I mean, it</p> <p>9 would come up after the convention at meetings.</p> <p>10 People's wish lists for violations to correct, you</p> <p>11 know, they would -- people will bring it up all year</p> <p>12 round, but if they're at the meeting, they might make</p> <p>13 a suggestion. But I can't come up with a specific</p> <p>14 moment for you.</p> <p>15 Q You described the Burnett -- the situation involving</p> <p>16 the Burnett County Sheriff's Department as the</p> <p>17 impetus for this lawsuit. After that event took</p> <p>18 place and FFRF -- that was when FFRF first considered</p> <p>19 filing a lawsuit?</p> <p>20 MR. BOLTON: Well, I'll object. I think</p> <p>21 that misstates her testimony.</p> <p>22 BY MR. ROSENBERG:</p> <p>23 Q You can answer. Or if I've misstated your testimony,</p> <p>24 if you could clarify, that would be great.</p> <p>25 A It was when we really talked to Rich, talked to an</p>

Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 82	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 84
<p>1 attorney about what we could do to remedy this</p> <p>2 violation.</p> <p>3 Q Prior to --</p> <p>4 MR. BOLTON: Again, I'm not trying to be</p> <p>5 difficult, but when you walk up to that line, then</p> <p>6 don't go beyond that in terms of the actual substance</p> <p>7 of any communications --</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. BOLTON: -- just because that's -- that</p> <p>10 gets us into a whole different legal realm.</p> <p>11 BY MR. ROSENBERG:</p> <p>12 Q And prior to speaking with your counsel about the</p> <p>13 possibility of a lawsuit challenging the National Day</p> <p>14 of Prayer, did you discuss such a lawsuit with anyone</p> <p>15 else?</p> <p>16 A I don't know how to answer that. I'm not following</p> <p>17 you.</p> <p>18 Q Well, in other words, at some point in time, some</p> <p>19 specific date, you approached your counsel,</p> <p>20 Mr. Bolton, about the possibility of filing a lawsuit</p> <p>21 challenging the National Day of Prayer.</p> <p>22 A Yes, at some point we did.</p> <p>23 Q Prior to approaching Mr. Bolton, did you have any</p> <p>24 specific conversations with anyone regarding the</p> <p>25 lawsuit?</p>	<p>1 that takes up a lot of our time every year so --</p> <p>2 Q Did you -- did you discuss the merits of the lawsuit?</p> <p>3 A Not with staff.</p> <p>4 Q With whom did you discuss the merits of the lawsuit?</p> <p>5 A Well, of course, we would talk with our counsel about</p> <p>6 that.</p> <p>7 Q Did you discuss the merits of your lawsuit with</p> <p>8 anyone other than counsel?</p> <p>9 A Probably not. I mean, that would be Dan and me</p> <p>10 talking with Rich.</p> <p>11 Most people don't know much about</p> <p>12 litigation. There's not much point in -- you know.</p> <p>13 Q But you've had substantial experience in litigation;</p> <p>14 have you not?</p> <p>15 A Yes.</p> <p>16 Q I want to talk a little bit about another topic that</p> <p>17 you discussed with Mr. Oster earlier today, and that</p> <p>18 was -- goes back to Exhibit No. 25. And I don't know</p> <p>19 if you still have a copy of that in front of you.</p> <p>20 That was a series of pages involving FFRF's, for lack</p> <p>21 of a better term, revenues and expenses over the last</p> <p>22 few years.</p> <p>23 And we had some discussions about a</p> <p>24 line item that involves legal fund donations. Am I</p> <p>25 recalling that we had such a discussion or that you</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 83	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 85
<p>1 A Well, with our staff.</p> <p>2 Q Okay. What was --</p> <p>3 A Over the years. We talked about all the violations</p> <p>4 stemming from the 1950s and what we could possibly do</p> <p>5 to remedy them.</p> <p>6 Q Well, what about lawsuits involving the National Day</p> <p>7 of Prayer? Was that discussed among your staff?</p> <p>8 A I'm sure I talked about it with my mother, Ann</p> <p>9 Gaylor, who is the founder; Dan; Rebecca at some</p> <p>10 point this year.</p> <p>11 Q And what was discussed? And, again, I don't want to</p> <p>12 know about any conversations you've had with</p> <p>13 either --</p> <p>14 A Rebecca was actually hired after we filed the</p> <p>15 lawsuit, so I guess I wouldn't have talked with her</p> <p>16 about it.</p> <p>17 Q And I don't want to know about any conversations you</p> <p>18 had with your in-house counsel either, but I am</p> <p>19 interested in conversations that you may have had</p> <p>20 with other staff members or other members with the</p> <p>21 Freedom From Religion Foundation regarding a possible</p> <p>22 lawsuit.</p> <p>23 A Well, I don't -- you know, we talk about violations</p> <p>24 of separation of church and state all the time at our</p> <p>25 office. And this is a pronounced recurring violation</p>	<p>1 and Mr. Oster had such a discussion?</p> <p>2 A What? Oh, yes.</p> <p>3 Q Legal fund donations. And why would somebody -- why</p> <p>4 would an FFRF member want to donate to the legal</p> <p>5 fund?</p> <p>6 A Because we work with the separation of church and</p> <p>7 state.</p> <p>8 Q Is it possible for an FFRF member to designate</p> <p>9 donated funds for a specific lawsuit?</p> <p>10 A It's possible, but it has not happened with the</p> <p>11 National Day of Prayer.</p> <p>12 Q Okay. Well, you anticipated my next -- my next</p> <p>13 question, then. Let's go back to the Burnett County</p> <p>14 Sheriff's Department for just a few minutes. I think</p> <p>15 we discussed over lunch, I'm not from Wisconsin, but</p> <p>16 I did look up Burnett County on a map, and it does</p> <p>17 seem to be at the other end of the state. Is that a</p> <p>18 fair --</p> <p>19 A Um-hmm.</p> <p>20 Q -- description?</p> <p>21 A It's by Lake Superior, I think.</p> <p>22 MR. BOLTON: We refer to it as "up north."</p> <p>23 BY MR. ROSENBERG:</p> <p>24 Q Up north. Well, every state has its own geographic</p> <p>25 rivalries. Did FFRF sue the sheriff of Burnett</p>



<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 86</p> <p>1 County?</p> <p>2 A No.</p> <p>3 Q Did FFRF consider suing the sheriff of Burnett</p> <p>4 County, again, with the caveat that I'm not</p> <p>5 interested in conversations you've had with your</p> <p>6 counsel?</p> <p>7 A Yes. We were quite open about it. I usually don't</p> <p>8 threaten a lawsuit or talk about filing a lawsuit</p> <p>9 unless we really mean business. We --</p> <p>10 Q So you didn't really mean business with Burnett</p> <p>11 County?</p> <p>12 A No, we did.</p> <p>13 Q But you didn't file a lawsuit?</p> <p>14 A Because we didn't have a plaintiff. They were all</p> <p>15 afraid. And they all have very good reasons for</p> <p>16 being afraid. Our members were afraid to be named.</p> <p>17 And we could not guarantee them that there would be a</p> <p>18 chance of confidentiality, since they were adults.</p> <p>19 We also worked -- we also asked the</p> <p>20 American Humanist Association to contact their</p> <p>21 members in Burnett County to see whether any of them</p> <p>22 would be willing to be a plaintiff. And I think most</p> <p>23 of them were in common, but none of them were</p> <p>24 willing -- was willing.</p> <p>25 And we also contacted Americans United</p>	<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 88</p> <p>1 dismiss the lawsuit? Do you know?</p> <p>2 MR. BOLTON: Say that again.</p> <p>3 BY MR. ROSENBERG:</p> <p>4 Q Has the state of Colorado moved to dismiss the</p> <p>5 lawsuit?</p> <p>6 MR. BOLTON: The state?</p> <p>7 MR. ROSENBERG: State of Colorado.</p> <p>8 MR. BOLTON: I can probably answer that</p> <p>9 question, that the state did move to dismiss. The</p> <p>10 court denied the motion. There's a trial</p> <p>11 scheduled -- the trial date is scheduled for April of</p> <p>12 2010, and the parties are approaching probably a</p> <p>13 dispositive motion situation in that case as well.</p> <p>14 MR. ROSENBERG: So they're a bit behind us</p> <p>15 right now?</p> <p>16 MR. BOLTON: Yeah. Yeah.</p> <p>17 BY MR. ROSENBERG:</p> <p>18 Q Earlier we discussed some of the relief that FFRF is</p> <p>19 seeking in this lawsuit. Among the relief that FFRF</p> <p>20 is seeking is a ruling from the Court declaring that</p> <p>21 the National Day of Prayer statute is</p> <p>22 unconstitutional.</p> <p>23 If the Court were to rule that the</p> <p>24 statute is unconstitutional, is FFRF, in your view,</p> <p>25 also seeking any form of declaratory judgment against</p>
<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 87</p> <p>1 for Separation of Church and State to ask whether</p> <p>2 they might contact the members from Burnett County on</p> <p>3 their mailing list. But they weren't willing to do</p> <p>4 that is my knowledge. I think they felt that was not</p> <p>5 appropriate for them to do that for us.</p> <p>6 Q Did you have any conversations with anyone from</p> <p>7 American Humanists Association regarding the merits</p> <p>8 of a potential lawsuit challenging the National Day</p> <p>9 of Prayer?</p> <p>10 A No. We had -- I E-mailed their legal counsel about</p> <p>11 it asking, can you -- can you send this E-mail if I</p> <p>12 give you an E-mail or can you send your own E-mail</p> <p>13 for us. And he did eventually do that. We didn't</p> <p>14 talk about the merits of the case.</p> <p>15 Q Did you have any conversations with anyone from</p> <p>16 Americans United regarding the merits of a potential</p> <p>17 lawsuit challenging the National Day of Prayer?</p> <p>18 A No. And it was also another E-mailed request.</p> <p>19 Q I believe that FFRF has also filed a lawsuit against</p> <p>20 the governor of Colorado challenging the</p> <p>21 gubernatorial proclamation for a day of prayer?</p> <p>22 A Yes.</p> <p>23 Q What is the status of that lawsuit?</p> <p>24 A Ongoing.</p> <p>25 Q Ongoing. Is it -- has the state of Colorado moved to</p>	<p>Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 89</p> <p>1 the president of the United States precluding him</p> <p>2 from issuing any prayer date proclamations on his</p> <p>3 own?</p> <p>4 MR. BOLTON: Again, I'm not sure if you're</p> <p>5 asking the witness for a legal --</p> <p>6 MR. ROSENBERG: I'm asking the witness for</p> <p>7 her view of what --</p> <p>8 THE WITNESS: I don't think I can answer</p> <p>9 that. I don't know.</p> <p>10 BY MR. ROSENBERG:</p> <p>11 Q You don't know what relief you're seeking in the</p> <p>12 lawsuit?</p> <p>13 A I'm not quite sure what you mean.</p> <p>14 Q Well, what relief are you seeking in this lawsuit?</p> <p>15 What do you -- let me rephrase that, because I'm not</p> <p>16 asking a legal question. I'm asking a factual</p> <p>17 question as to your view of the relief that Freedom</p> <p>18 From Religion Foundation and the individual</p> <p>19 plaintiffs are seeking in this lawsuit.</p> <p>20 MR. BOLTON: Again, I'll object to the</p> <p>21 extent that I think that calls for a legal</p> <p>22 conclusion. And to the extent that -- I mean, I</p> <p>23 stated my understanding earlier with Mr. Oster that</p> <p>24 the issue pending in the lawsuit relates to the</p> <p>25 National Day of Prayer and the legislation mandating</p>



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1 it. Whether or not the president issues other  
2 proclamations without that authority or mandate is  
3 not the subject of the lawsuit. Now, whether or  
4 not -- if that hypothetical situation arises or not,  
5 whether or not it would involve legal issues, I'll  
6 tell you, we're not speculating on that. And so when  
7 you ask is that -- is that the relief that we're  
8 seeking in this lawsuit, I can tell you that that is  
9 not the relief that we're seeking in the immediate  
10 lawsuit.

11 MR. ROSENBERG: So are plaintiffs, then --  
12 and I'm not sure who to direct this question to at  
13 this point. Are plaintiffs, then, not seeking any  
14 injunctive relief against the president of the United  
15 States?

16 MR. BOLTON: We are seeking to have the  
17 National Day of Prayer as its -- as is mandated by --  
18 as a specific mandate through the legislation.  
19 That's the subject of the lawsuit.

20 If you're asking beyond that what  
21 would be required or prohibited, that's not the  
22 subject of the lawsuit.

23 BY MR. ROSENBERG:

24 Q Okay. I would like to turn to President Obama's 2009  
25 National Day of Prayer proclamation. You indicated

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1 earlier that the interaction between the National Day  
2 of Prayer -- your view is that the interaction  
3 between the National Day of Prayer Task Force and the  
4 government increased in 1988 and -- well, let me just  
5 ask you that.

6 MR. BOLTON: Can we stop just a minute?

7 THE WITNESS: I've got to make sure I have  
8 it in front of me.

9 MR. BOLTON: I'm not sure the witness has  
10 the '09.

11 MR. ROSENBERG: I'm not going to ask  
12 anything specific about the proclamation at this  
13 point. I'm turning to the subject matter of the  
14 proclamation.

15 THE WITNESS: I have it.

16 BY MR. ROSENBERG:

17 Q But it was your testimony earlier, I believe, that  
18 starting in 1988, you viewed the National Day of  
19 Prayer Task Force as becoming more involved with  
20 presidential prayer proclamations?

21 A Yes, although I knew they were involved because I  
22 started documenting that in 1985 as editor.

23 Q You don't contend, though, that the National Day of  
24 Prayer Task Force played any role in President  
25 Obama's 2009 proclamation, do you?

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1 A Only indirectly.

2 Q How?

3 A Well, I think our lawsuit and our challenge is what  
4 got him to put in the little bit of wording about --  
5 where did he put it? I've never seen a proclamation  
6 that talked about -- let me read it. "We recognize  
7 that people of all faiths can worship or not worship  
8 according to the dictates of their conscience."

9 I thought that was kind of a direct  
10 result of our lawsuit and that it was very deliberate  
11 that President Obama did not invite the National Day  
12 of Prayer Task Force into the White House, as they  
13 had so often been invited by previous presidents,  
14 because he was very cognizant of our litigation.

15 Q President Clinton didn't invite members of the  
16 National Day of Prayer Task Force into the White  
17 House, did he?

18 A I don't know that. I'm not sure that that's true.

19 Q Okay. In your view, was President Obama's 2009  
20 National Day of Prayer proclamation an improvement  
21 upon previous presidential proclamations?

22 A Not really. I mean, there's that little -- he throws  
23 this little, you know, thought to us because of our  
24 litigation, but then he's telling us to pray and what  
25 to pray about. And "I call upon Americans to pray in

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1 thanksgiving for our freedoms and blessings and to  
2 ask for God's continued guidance, grace, and  
3 protection of this land that we love." And I regard  
4 that as over the line constitutionally as any of the  
5 other proclamations.

6 And our members should not be called  
7 on to pray by the president. It's none of the  
8 president's business if we pray. And he is not  
9 elected, you know, clergy in chief. He's commander  
10 in chief. He has no business telling anybody they  
11 should pray. If he wants to pray, we wouldn't be  
12 complaining. If he wants to go to church, fine. But  
13 he should not be telling Americans to pray and what  
14 to pray about and this implication that somehow God  
15 is guiding our land.

16 It is very offensive to our  
17 membership. They regard that as very primitive  
18 thinking and as trying to blend religion and  
19 government.

20 Q I understand that your views are very strongly held  
21 on this topic, but let me go back to a very specific  
22 question. You don't have any basis to believe that  
23 President Obama included the line acknowledging the  
24 freedom of Americans to worship or not worship as  
25 they so choose because of this litigation, do you?

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<p>1 A I very fervently believe it.</p> <p>2 Q You believe it, but you don't have any basis --</p> <p>3 A We've never seen a line like this thrown in, and</p> <p>4 suddenly we file a lawsuit and he throws it in. But</p> <p>5 that doesn't make his proclamation any more -- any</p> <p>6 less offensive to us or any more constitutional.</p> <p>7 Q Are you aware that President Obama also acknowledged</p> <p>8 the role of atheists and agnostics in his</p> <p>9 inauguration speech?</p> <p>10 A And actually, President Bush also did something</p> <p>11 similar. I think he just mentioned atheists or</p> <p>12 nonbelievers. He was not the first president to make</p> <p>13 a reference to that.</p> <p>14 Q Now, you first became aware of the specific language</p> <p>15 in President Obama's proclamation because you</p> <p>16 retrieved it from -- because you retrieved it from</p> <p>17 the White House's website?</p> <p>18 A Yes. I did retrieve it. I was waiting for it, of</p> <p>19 course. We were very -- of course we needed to see</p> <p>20 what he was going to be saying because we were suing</p> <p>21 him for it. So naturally we needed to see it.</p> <p>22 But it was getting a lot of publicity</p> <p>23 all over the country because of the pressure that was</p> <p>24 being put on him because he wasn't throwing a party</p> <p>25 for the Focus on the Family-type folks at the White</p>	<p>1 particularly cooperating with the National Day of</p> <p>2 Prayer Task Force and being told that you're supposed</p> <p>3 to go out and, you know, spend the day celebrating</p> <p>4 the National Day of Prayer.</p> <p>5 BY MR. ROSENBERG:</p> <p>6 Q President Obama did not cooperate with the National</p> <p>7 Day of Prayer Task Force, did he?</p> <p>8 A Well, it would have been nice if he would have said,</p> <p>9 I can't give this proclamation in good conscience.</p> <p>10 That would have been an interesting constitutional</p> <p>11 situation.</p> <p>12 Q But that doesn't answer my question. He did not</p> <p>13 cooperate with the National Day of Prayer Task Force,</p> <p>14 did he?</p> <p>15 A Well, he did in that he issued the proclamation that</p> <p>16 they lobbied to Congress to enact.</p> <p>17 Q But he --</p> <p>18 A They are the people behind it.</p> <p>19 Q He issued the proclamation because the statute</p> <p>20 requires the president to issue a proclamation.</p> <p>21 A Right. But that's because the National Prayer</p> <p>22 Committee and the National Day of Prayer lobbied</p> <p>23 Congress to do it.</p> <p>24 Q The National Day of Prayer has been a statute since</p> <p>25 1952; has it not?</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 95	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 97
<p>1 House. And so there was a great deal of publicity</p> <p>2 about it.</p> <p>3 Q Now, not all of FFRF's members are as focused on the</p> <p>4 National Day of Prayer as you are, are they?</p> <p>5 A Well, that -- if they were in my position, they would</p> <p>6 be.</p> <p>7 Q And your position being the -- you've made the</p> <p>8 separation of church and state and fighting for what</p> <p>9 you believe to be certain establishment clause</p> <p>10 principles to be a substantial part of your -- or the</p> <p>11 guiding force of your professional life?</p> <p>12 MR. BOLTON: Object to the form of the</p> <p>13 question. But if you can answer it.</p> <p>14 THE WITNESS: Well, Dan and I are elected</p> <p>15 to carry out the purposes of the foundation, in that</p> <p>16 our -- one of our main -- one of our two purposes is</p> <p>17 to make sure that we are doing something to buttress,</p> <p>18 you know, to the Thomas Jefferson wall of separation</p> <p>19 between church and state.</p> <p>20 And how can you do that when you have</p> <p>21 a National Day of Prayer Congress enacts and you have</p> <p>22 the president proclaiming it every year and telling</p> <p>23 every American, including, you know, 30 million</p> <p>24 Americans who are not religious to pray and to unite</p> <p>25 in prayer; and other presidents before them</p>	<p>1 A And that's because Billy Graham said it should be</p> <p>2 enacted. I mean, we have a whole picture here of the</p> <p>3 Protestant religious rite and working with some other</p> <p>4 denominations enacting unconstitutional legislation</p> <p>5 directing citizens to pray by the highest executive</p> <p>6 of the land. And how do you separate church and</p> <p>7 state when you have that kind of violation and you</p> <p>8 can't get at it and it happens year after year after</p> <p>9 year?</p> <p>10 Q But my question -- let me be a little more specific.</p> <p>11 And we have to wrap it up because we only have about</p> <p>12 a minute left in the tape. President Obama did not</p> <p>13 adopt the National Day of Prayer Task Force's theme</p> <p>14 for 2009, did he?</p> <p>15 A That's no guarantee he won't do it again.</p> <p>16 Q He didn't adopt the theme, did he?</p> <p>17 A I think that he's picked up language that's been used</p> <p>18 over and over again that may be in the theme. We</p> <p>19 would have to analyze it.</p> <p>20 Q But you are not aware of him having adopted any</p> <p>21 specific language within that proclamation now, are</p> <p>22 you?</p> <p>23 A Well, it sure sounds familiar. He didn't adopt the</p> <p>24 2009 scripture verse and theme.</p> <p>25 Q There are no Christian references in that</p>

Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 98	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 100
<p>1 proclamation, are there?</p> <p>2 A Well, I would have to read it again. There's</p> <p>3 religious references all over the place, and we're</p> <p>4 being told to pray. And this isn't about</p> <p>5 Christianity in government; it's about religion in</p> <p>6 government.</p> <p>7 MR. ROSENBERG: Why don't we go ahead and</p> <p>8 take a break.</p> <p>9 THE VIDEOGRAPHER: This is the end of disk</p> <p>10 number one. We are off the record at 1:10 p.m.</p> <p>11 (A break was taken.)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record at 1:23 p.m.</p> <p>14 BY MR. ROSENBERG:</p> <p>15 Q Ms. Gaylor, we were discussing a few minutes ago that</p> <p>16 you have been very involved in your professional life</p> <p>17 in church/state separation issues; is that correct?</p> <p>18 A Yes.</p> <p>19 Q And that's part of the reason why you are so familiar</p> <p>20 with the National Day of Prayer?</p> <p>21 A Part of the reason.</p> <p>22 Q And would you agree that it's possible for an</p> <p>23 individual to ignore the National Day of Prayer with</p> <p>24 no consequence whatsoever?</p> <p>25 A Well, no, because not -- not our membership. I mean,</p>	<p>1 that we get treated like we're not true Americans and</p> <p>2 there's a climate of intolerance and -- you know, our</p> <p>3 crank mail is pretty ghastly at work. And most of it</p> <p>4 is, if you don't believe there should be religion in</p> <p>5 government, whatever we're complaining about, you</p> <p>6 should leave the country. I mean, it's a chorus. We</p> <p>7 should go to Pakistan, we should go to Afghanistan,</p> <p>8 we should go to Russia, we should go to China.</p> <p>9 So I think that when there's --</p> <p>10 government aligns itself with religion, then the</p> <p>11 consequences that those of us who are not religious</p> <p>12 are made to feel like we're not real Americans. It</p> <p>13 affects the whole quality of our life.</p> <p>14 Q Why don't we -- why don't we mark this as Exhibit 26.</p> <p>15 (Exhibit 26 marked for identification.)</p> <p>16 BY MR. ROSENBERG:</p> <p>17 Q Why don't you take a minute, take a look at this</p> <p>18 document. Then I might just have a question or two</p> <p>19 for you about it. And specifically I'm looking at</p> <p>20 the top half of that page.</p> <p>21 A Well, I would have liked to have known if he -- if</p> <p>22 he's still a member.</p> <p>23 Q Well, do you recognize this document?</p> <p>24 A I didn't see all the raw data. I didn't read all of</p> <p>25 it.</p>
Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 99	Video Deposition of ANNIE LAURIE GAYLOR, 11/24/09 Page 101
<p>1 they can't really ignore it. It's proclaimed</p> <p>2 everywhere. And they don't pray, and they're being</p> <p>3 told they should, and as Americans they should pray.</p> <p>4 Q Are you saying that none of your members ignore the</p> <p>5 National Day of Prayer?</p> <p>6 A Well, of course they're not going to pray because</p> <p>7 their president tells them to, but they're feeling</p> <p>8 disenfranchised.</p> <p>9 Q Some of them just might not care at all?</p> <p>10 A A few, but not most. I feel like I hear it from most</p> <p>11 of them --</p> <p>12 Q But certainly --</p> <p>13 A -- over this issue.</p> <p>14 Q But certainly some of them may ignore the National --</p> <p>15 A If they don't read papers or pay attention to news at</p> <p>16 all, go on the Internet maybe.</p> <p>17 Q Even if they do read newspapers, they may still</p> <p>18 ignore the National Day of Prayer?</p> <p>19 A Well, that's their right.</p> <p>20 Q And they could do so with no consequence whatsoever;</p> <p>21 is that correct?</p> <p>22 A Well, I don't think that's really true. I think that</p> <p>23 there's a lot of consequence when the government</p> <p>24 violates a separation of church and state toward our</p> <p>25 membership and toward people who are nonbelievers,</p>	<p>1 Q But do you recognize the document?</p> <p>2 A Yeah.</p> <p>3 Q And this is raw data for what?</p> <p>4 A From our survey.</p> <p>5 Q And this is a survey of what?</p> <p>6 A Over -- well, I have it in front of me. It was about</p> <p>7 the National Day of Prayer and how our members felt</p> <p>8 about it.</p> <p>9 Q And what I'm looking at is the top half of the</p> <p>10 document there's an individual named Shawn Cary.</p> <p>11 Just so you can see where I am. Mr. Cary -- does</p> <p>12 this appear to be a response from Mr. Cary regarding</p> <p>13 the survey?</p> <p>14 A Yes.</p> <p>15 Q And was the survey only open to FFRF members?</p> <p>16 A Yes. Although if there was somebody -- if they had a</p> <p>17 family member who had access to their E-mail, I</p> <p>18 suppose we could have gotten a nonmember response.</p> <p>19 But we didn't check them all.</p> <p>20 Q I suppose that's possible. But would you agree with</p> <p>21 me that it's certainly likely that Mr. Cary is a</p> <p>22 member of FFRF?</p> <p>23 A Was a member at the time this was sent out, yes.</p> <p>24 Q And this was in March of 2009?</p> <p>25 A Yes.</p>

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1 Q When -- how long do memberships last?  
2 A A year.  
3 Q So if -- when do membership drops occur?  
4 A Everybody renews on the date that they became -- I  
5 mean, we send -- there isn't just one renewal date.  
6 It's all -- it's every month there's different  
7 renewals going out.  
8 Q And would you agree with me that Mr. Cary from the --  
9 on the basis of this survey result does not care  
10 whether there's a National Day of Prayer or not?  
11 A Yes.  
12 Q So certainly there are some members of FFRF who  
13 ignore the National Day of Prayer with absolutely no  
14 consequence?  
15 A Um-hmm. But without going to look at his membership  
16 data information, I don't know how long he's been a  
17 member. He might have been a member for a month, and  
18 he might not be very well-versed in what we do in the  
19 history of the separation of church and state.  
20 And I would say this is an extreme  
21 minority reaction. You have found -- found that.  
22 There were just -- there were about 200 people who  
23 didn't care, but everybody else did.  
24 Q How many survey responses did you receive?  
25 A Well, I'd have to look at it.

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1 Q Just an estimate.  
2 A I can't estimate. I can't -- you know, you're --  
3 it's a quiz on my memory, and I want to be --  
4 Q 100?  
5 A Oh, no.  
6 Q 500?  
7 A It was I think 1700. But let me --  
8 Q 1700. How many members does FFRF have?  
9 A 14,000 now.  
10 Q Okay. So would you agree with me that the number of  
11 people who responded to the survey in the first  
12 instance was a relatively small fraction of FFRF's  
13 membership?  
14 A But what you have to recognize is that we had less --  
15 we had about 6,000 E-mails from members that went  
16 out. We are trying to get members to send their  
17 E-mails, but we don't have E-mails for about half of  
18 our members. They tend to be older, for one thing.  
19 And a lot of those E-mails were not necessarily good.  
20 So --  
21 Q Let me ask that question again, though, because you  
22 haven't actually answered the question, which is, you  
23 would agree that the number of people who responded  
24 to the survey is a relatively small fraction of  
25 FFRF's total membership?

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1 A Well, from a statistical point of view, I think it  
2 was relevant. We had 1747 responses out of about  
3 6,000 sent. I don't really know how many were  
4 accurate E-mails of that 6,000.  
5 Q Are you a statistician?  
6 A No.  
7 Q So in your view, if less than a quarter people --  
8 quarter of the people who are sent a survey respond,  
9 is that significant?  
10 A Well, because of the plethora of e-mail out there,  
11 who knows whether these people were even opening  
12 their E-mails or whether they even saw them.  
13 Q Well, FFRF certainly made an effort to try to obtain  
14 responses from the survey?  
15 A We made an effort -- yes, and to try to do it more  
16 cheaply than sending out by mail to 14,000 people.  
17 We just wanted a sample.  
18 Q And why did FFRF send out this survey?  
19 A To show the concern of our members. And you can see  
20 it if you have the survey in front of you.  
21 Q The survey was filed after the lawsuit was filed; was  
22 it not?  
23 A Yes.  
24 Q Was the survey tied to the lawsuit in any way?  
25 A Yes, we did -- we did ask people to let us know their

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1 opinion. And we notified them that we had an ongoing  
2 National Day of Prayer litigation and that's why we  
3 wanted to know what their opinion was.  
4 Q Was there any other relevance to their opinion  
5 regarding the lawsuit?  
6 A Well, we wanted to know what they thought.  
7 Q Why is that relevant?  
8 A To show how concerned our members are about the  
9 National Day of Prayer.  
10 Q Did FFRF create this survey in an attempt to  
11 demonstrate that it has standing to bring this  
12 lawsuit?  
13 A I think that -- I wrote it. I wrote the survey. And  
14 I wanted to convey to the government the level of  
15 distress and concern by our membership, and this  
16 seemed like a good way to do it. I mean, we have --  
17 the vast majority, 15,033 of the 1700 responded said  
18 that it makes them feel like they're "an outsider in  
19 my community/country because I do not believe my  
20 government should be directing me to pray."  
21 I mean, we had 15,029 saying that the  
22 message conveyed to me is "that my government  
23 considers prayer a desirable activity for me and  
24 other citizens to engage in."  
25 Q Let me ask the question again. Did FFRF create the



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1 survey in order -- in an attempt to demonstrate its  
2 standing to bring this lawsuit?  
3 A I created this survey to have something to show the  
4 government about the level of concern by our  
5 membership.  
6 Q When you say "the government," do you mean the  
7 Department of Justice, the White House, or the United  
8 States District Court for the Western District of  
9 Wisconsin or some other entity?  
10 A I guess I wanted to show the Court that this is a big  
11 issue to our members, that they really feel  
12 distressed. You can't bring them all in, can you?  
13 So this --  
14 Q You said that you have a copy of the survey with you?  
15 A Yes.  
16 Q Do you mind if I take a look at that? I have a copy  
17 in my computer, but it might be faster if I could  
18 just glance at that.  
19 A Yeah.  
20 MR. BOLTON: Why don't I make some copies  
21 real quick.  
22 MR. ROSENBERG: Do you want to take a quick  
23 break?  
24 MR. BOLTON: Yeah, I'll make some copies.  
25 THE VIDEOGRAPHER: We are off the record at

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1 1:33 p.m.  
2 (Pause in proceedings.)  
3 (Exhibits 27-28 marked for identification.)  
4 THE VIDEOGRAPHER: We are back on the  
5 record at 1:40 p.m.  
6 BY MR. ROSENBERG:  
7 Q Ms. Gaylor, you've been handed what's been marked as  
8 Exhibit Nos. 27 and 28. Exhibit 27 is an E-mail  
9 chain, and Exhibit 28 appears to be a document that  
10 reflects the results of the survey that we were  
11 discussing just a few moments ago.  
12 Do you recognize these documents?  
13 A Yes.  
14 Q Okay. Now, I asked you previously whether FFRF  
15 prepared this survey in an attempt to demonstrate its  
16 standing in bringing this lawsuit. Having reviewed  
17 this document, do you wish to change your testimony  
18 in any way?  
19 A Well, this -- yes, we did distribute this, but I  
20 don't think my testimony contradicts that.  
21 Q Well, I asked you previously whether FFRF prepared  
22 this survey in order to demonstrate its standing to  
23 bring this lawsuit challenging the constitutionality  
24 of the National Day of Prayer. Is that the reason  
25 why FFRF prepared this survey?

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1 A Yes. I prepared the survey.  
2 Q You prepared the survey. Is that the reason why you  
3 prepared the survey?  
4 A Yes, to show the distress level of our membership. I  
5 think that goes to standing.  
6 Q Okay. And the E-mail that distributed the survey to  
7 FFRF's members went to significant lengths to assert  
8 that only FFRF --  
9 A Yes.  
10 Q -- membership fill out the survey?  
11 A Right.  
12 Q And that's because responses by nonFFRF members  
13 wouldn't do anything to demonstrate the standing of  
14 FFRF members to bring this lawsuit?  
15 A Yes. And also just because people tend to just  
16 forward things promiscuously.  
17 Q That is the danger of E-mails.  
18 A Right.  
19 Q I think we can all agree on that. I would like to  
20 turn briefly to Exhibit No. 28. And really, I just  
21 have a handful of questions regarding the first  
22 aspect of the survey under the header "Survey  
23 Response." "I have been exposed to the NDP" --  
24 National Day of Prayer -- "via," and there appear to  
25 be four options by which people can respond to the

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1 survey?  
2 A Um-hmm.  
3 Q Is that correct?  
4 A Um-hmm.  
5 Q The first, that individuals have been exposed via  
6 "participation by my local officials or my governor  
7 in the National Day of Prayer events." And 590 FFRF  
8 members indicated that that was the method by which  
9 they were exposed; is that correct?  
10 A Yes.  
11 Q The substantial majority have indicated that they  
12 were exposed via media coverage of local or national  
13 National Day of Prayer events; is that correct?  
14 A Yes.  
15 Q The third option is, National Day of Prayer events in  
16 my area held on governmental property or government  
17 property; is that correct?  
18 A Yes.  
19 Q And the fourth option is, religious  
20 promotion/advertising of the National Day of Prayer;  
21 is that correct?  
22 A Yes.  
23 Q Are there any other options that individuals were  
24 given to respond to the survey to indicate the basis  
25 by which they were exposed to the National Day of

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1 Prayer?  
2 A I don't think so.  
3 Q Okay. So individuals were not given the option,  
4 then, to demonstrate that they were exposed to the  
5 National Day of Prayer by receiving directly from the  
6 White House presidential prayer proclamations; is  
7 that correct?  
8 A That's correct.  
9 Q Are you familiar with an organization called  
10 Interfaith Alliance?  
11 A Dimly, yes.  
12 Q Can you tell me a little bit about them?  
13 A I think Walter Cronkite had something to do with  
14 founding them. And I do hear Reverend Gaddy on Air  
15 America from time to time.  
16 Q And who is Reverend Gaddy? Was that the name?  
17 A Yeah.  
18 Q Who was he?  
19 A I'm not sure. I think he might be their director,  
20 but I'm not sure.  
21 Q Do you have an understanding of what Interfaith  
22 Alliance's purposes are?  
23 A I think that they are a liberal religionist group,  
24 and I think they're pro state/church, but I'm not --  
25 I couldn't -- I haven't read them.

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1 Q Are you familiar with an organization called Jews On  
2 First?  
3 A I have heard the name.  
4 Q But beyond that, you're not familiar with them?  
5 A Not really.  
6 Q Are you aware that both of those organizations have  
7 in the past opposed the National Day of Prayer?  
8 A I was pretty sure, but I haven't seen a lot of stuff  
9 from them. But they seem to be, you know,  
10 progressive.  
11 Q Are you aware that those organizations wrote to  
12 President Obama regarding his forthcoming 2009  
13 National Day of Prayer proclamation?  
14 A No.  
15 Q Why don't we mark as Exhibit No. 29 what I'm handing  
16 you as a letter that was produced in discovery from  
17 the Interfaith Alliance to President Obama. Why  
18 don't you take just a moment to take a look at the  
19 letter and familiarize yourself with it, and then I  
20 might have a question or two for you about it.  
21 Do you have a copy of the letter?  
22 THE WITNESS: She's having to dictate,  
23 write what you say, so I will get it in a second.  
24 MR. ROSENBERG: Sure.  
25 (Exhibit 29 marked for identification.)

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1 MR. ROSENBERG: One day it will all be  
2 instantaneous, but --  
3 THE WITNESS: (Witness complies.)  
4 BY MR. ROSENBERG:  
5 Q You've had an opportunity to review the letter?  
6 A Um-hmm.  
7 Q Have you even this letter before?  
8 A No.  
9 Q Okay. Well, as I mentioned, this was a letter that  
10 was sent to the White House. And would you agree  
11 that the -- that this is a letter from the Interfaith  
12 Alliance and Jews On First?  
13 A Yes.  
14 Q And that at the time that they wrote this letter,  
15 they had expressed at least some of the same concerns  
16 about the National Day of Prayer as has the Freedom  
17 From Religion Foundation --  
18 A Looks like it.  
19 Q -- over the years? And specifically, they requested  
20 that the president issue a declaration that would be  
21 open to believers of all religions, as well as those  
22 who profess no religion?  
23 A Well, that's not what this says.  
24 Q What does it say?  
25 A To restore the annual day of prayer to what they're

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1 claiming President Harry Truman intended.  
2 Q I'm looking just a little -- I'm looking at the  
3 second sentence of the first paragraph where it says,  
4 "We are requesting a declaration that explicitly  
5 opens this day, established by President Truman, to  
6 clergy and believers of all religions, as well as  
7 those who profess no religion." Do you see that?  
8 A Yes.  
9 Q But then you also indicated that the Interfaith  
10 Alliance has a view on what President Truman intended  
11 the National Day of Prayer to be?  
12 A Yes. I mean, I think that that's putting a favorable  
13 light on it.  
14 Q But it is nonetheless a view of President Truman's  
15 intent on signing the National Day of Prayer statute  
16 in 1952; is that correct?  
17 A Yeah, I don't think that they -- the statute doesn't  
18 say that.  
19 Q Doesn't say what?  
20 A To pray and meditate in whatever way was appropriate  
21 for them.  
22 Q Okay. Well, let's take a look at the statute.  
23 (Exhibit 30 marked for identification.)  
24 BY MR. ROSENBERG:  
25 Q What I've handed to you is a document that is being

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1 marked Exhibit No. 29 -- I don't know if you have it  
2 in front of you yet. 30? Yes, 30. Exhibit No. 30.  
3 And the National Day -- this is a printout of the  
4 language of the National Day of Prayer statute  
5 Section 119 in the left-hand column in the middle of  
6 the page. Now, this is the statute that --  
7 subsequent to its amendment for the first Thursday in  
8 May. But I think we all agree that the amendment in  
9 1988 didn't involve a substantive change to the  
10 statute, other than requiring that the president  
11 issue a proclamation on the first Thursday in May.  
12 A Yes.  
13 Q Okay. Why don't you take a look at that.  
14 A I have.  
15 Q Okay. Do you still disagree with the Interfaith  
16 Alliance's view that President Truman signed this --  
17 established a National Day of Prayer as a day in  
18 which Americans -- to both pray and meditate in  
19 whatever manner was appropriate for them?  
20 A Yes.  
21 MR. BOLTON: I would just note for the  
22 record that it says, "may turn to God in prayer and  
23 meditation at churches, in groups, and as  
24 individuals." So that the actual language of the  
25 statute is clear on the record.

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1 BY MR. ROSENBERG:  
2 Q Well, I was asking about the letter, but I appreciate  
3 the clarification.  
4 MR. BOLTON: Okay. I'm sorry.  
5 THE WITNESS: Well, the letter is different  
6 from the law. It's not mentioning God. In prayer  
7 and -- you know, to both pray and meditate. It  
8 sounds like you could just meditate. Whereas, the  
9 law is saying "turn to God in prayer and meditation."  
10 You're supposed to meditate about God at churches, in  
11 groups, and as individuals. It says nothing about in  
12 whichever way was appropriate for them. So they're  
13 putting a rosy light on it.  
14 BY MR. ROSENBERG:  
15 Q Certainly if an individual meditates as an  
16 individual, that's up to them to decide how they wish  
17 to pray; is it not?  
18 A Not according to the law. It says, you "may turn to  
19 God in prayer and meditation at churches in groups  
20 and as individuals."  
21 Q Or you may not?  
22 A No, that's not what it says.  
23 Q Reading the statute, does the statute not say, "on  
24 which the people of the United States may turn to God  
25 in prayer and meditation at churches, in groups, and

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1 as individuals"?"  
2 A Well, it doesn't say anything about "or not." You're  
3 putting words into the statute that are not there.  
4 You're putting an intent that is not there.  
5 Q Earlier you referenced getting out a dictionary.  
6 What is your definition of the term "may"?"  
7 A It's not coercing you to go to church, but it is  
8 urging you to.  
9 MR. BOLTON: We can actually solve that  
10 particular issue by getting the dictionary, but my  
11 sense is that we're starting between the two of us to  
12 get argumentative.  
13 BY MR. ROSENBERG:  
14 Q Well, I'm just asking the question. I think I have  
15 what I want because it's not coercive. And certainly  
16 if one may turn to God, the flip side of that is, one  
17 may not. Is that not correct?  
18 A That's not what the statute says.  
19 Q I'm not asking what the statute says. I'm asking  
20 what your interpretation of that plain language is.  
21 A Well, if you're urging the president -- if you're  
22 mandating the president designate a day of prayer,  
23 obviously you want people to pray. It's not saying  
24 you're asking them not to pray.  
25 Q Why is that obvious?

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1 A Well, it was obvious to all the presidents who then  
2 turned around and urged all Americans to pray since  
3 1952.  
4 Q Are you saying that every American president has --  
5 that no American president has acknowledged -- other  
6 than President Obama has acknowledged the right of  
7 individuals to not pray?  
8 A I think there might have been some language that was  
9 helpful on that with L.B.J. But then he turned  
10 around and ruined it with the rest of the  
11 proclamation. That's about it.  
12 Q But President Johnson did acknowledge explicitly that  
13 he could not, of course, require anyone to pray on  
14 the National Day of Prayer, nor would he even want  
15 to.  
16 A And yet then he turned around and urged everybody to  
17 pray.  
18 Q Is that because the language subsequent in that  
19 proclamation where presidents generally use the term,  
20 "I hereby call upon Americans" or "all Americans to  
21 pray and commemorate this day"? I mean, the language  
22 varies from proclamation to proclamation, but is that  
23 the language to which you object?  
24 A Yes, I would have to look at the specific  
25 proclamation.

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1 Q But you can see that President Johnson did, in fact,  
2 explicitly acknowledge during the signing of the  
3 19 -- I believe it was the 1964 proclamation that he  
4 could not, of course, require anyone to pray, nor  
5 would he want to?  
6 A I don't think he exactly said that.  
7 Q What don't you think he said?  
8 A Nor would he want to. He said, "Under our laws,  
9 every man has the right to pray. No man can be told  
10 how he must pray. Each man must pray as his own  
11 conscience dictates."  
12 Then the next paragraph, "I call upon  
13 all citizens, therefore, to observe the National Day  
14 of Prayer."  
15 So -- and then he proceeds to urge  
16 everybody to turn to God on that day. And then he  
17 tells us what to pray about, including forgiveness  
18 for our shortcomings. So that doesn't really solve  
19 the problem for people who don't pray.  
20 Q Well, since we're discussing the proclamation, maybe  
21 we should go ahead and enter that as an exhibit as  
22 well.  
23 (Exhibit 31 marked for identification.)  
24 BY MR. ROSENBERG:  
25 Q So I'm looking at Exhibit No. 31, which I believe was

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1 attached as an exhibit to one of FFRF's recent  
2 filings. And I'm specifically looking at the fourth  
3 paragraph that begins with the language "In putting  
4 my name to this paper, I cannot proclaim that all  
5 Americans will pray on October 20th, nor would I do  
6 so even if I could."  
7 Do you see that language?  
8 A Yes. But you told me it was 1964. I was responding  
9 to your 1964 question.  
10 Q Well, I believed it was 1964. And I apologize, but I  
11 was mistaken. But let's talk about 1965 for a  
12 minute, since that is what we have. Do you  
13 acknowledge that President Johnson specifically noted  
14 that in signing the 1965 National Day of Prayer  
15 proclamation that he could not proclaim that all  
16 Americans will pray on that year's National Day of  
17 Prayer, nor would he do so even if he could?  
18 A I would have to find the paragraph.  
19 Q It's the fourth paragraph down at the -- begins with  
20 "In putting my name to this paper."  
21 A Yes, he said that. But then he went and contradicted  
22 it with the rest of the proclamation.  
23 Q So it's unclear within the proclamation what the  
24 president was actually proclaiming?  
25 A I don't think it's unclear. He was proclaiming a

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1 National Day of Prayer. He urged "each citizen,  
2 according to his own conscience, to pause on this day  
3 to acknowledge our dependence upon God." He goes on  
4 and talks about that in the same way that all the  
5 other presidents do.  
6 And when he gave that proclamation in  
7 1965, I know there were a few atheists in the country  
8 because my parents did not believe in God. I was a  
9 little young to have an opinion. Each American  
10 includes -- that excludes everybody who's not  
11 religious. I mean, it's the assumption that  
12 everybody's religious and believes in God. That  
13 greatly offends myself and our membership.  
14 Q So every time a president uses the language "all  
15 Americans" in a proclamation, do you think that an  
16 individual who disagrees with the subject of that  
17 proclamation has a right to bring a lawsuit?  
18 A Freedom of conscience is a little bit different under  
19 the First Amendment. It's put on a different level  
20 by the Bill of Rights. It's what our country is  
21 based on, that the government cannot tell you what  
22 you have to believe in matters of personal conscience  
23 concerning religion.  
24 Q Are you aware of how many proclamations the president  
25 issues each year?

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1 A No.  
2 Q It's many, though; is it not?  
3 A I suppose.  
4 Q Well, why are you not aware of all the proclamations  
5 that the president issues?  
6 A This is the one that disenfranchises nonreligious  
7 Americans. This is the one that we hear about every  
8 year.  
9 Q When you say "disenfranchises," you don't mean it  
10 takes away your right to vote.  
11 A But it injures our freedom of conscience.  
12 Q So if you didn't have a professional interest in  
13 church/state separation issues, do you think that you  
14 would have been aware of the National Day of Prayer?  
15 A Yes, I would have, because I follow the news, and  
16 because as an individual I feel just as strongly as  
17 our other members that this is deeply offensive to  
18 me. I'm an American, and I should not be told that  
19 all Americans are supposed to pray in our own way  
20 because I don't pray. And I don't think prayer is  
21 any of the government's business. And I think that's  
22 the road to theocracy.  
23 Q And, again, it's because of this language where the  
24 president says, "I call upon all Americans" in  
25 National Day of Prayer proclamations that you



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<p>1 believe --</p> <p>2 A Well, the proclamations are all offensive in their</p> <p>3 own way. I mean, every one of them offends me</p> <p>4 deeply.</p> <p>5 Q Every -- when you say "every one of them," every</p> <p>6 presidential proclamation or every presidential</p> <p>7 National Day of Prayer proclamation?</p> <p>8 A Every National Day of Prayer presidential</p> <p>9 proclamation has something in it that offends me and</p> <p>10 offends other nontheists.</p> <p>11 Q Is it because you're offended by the National Day of</p> <p>12 Prayer proclamations that you go to the White House's</p> <p>13 website to retrieve them?</p> <p>14 A I want to know what the president is doing, yes, that</p> <p>15 is unconstitutional. That's what the foundation</p> <p>16 does.</p> <p>17 Q And that's because of the type of work that you do as</p> <p>18 co-chair of the Freedom From Religion Foundation?</p> <p>19 A Well, we monitor this, yes. But I would be offended</p> <p>20 as an individual; every year I am. My stomach drops</p> <p>21 when I hear about the impending National Day of</p> <p>22 Prayer, and I'm stressed, and I feel that it's wrong.</p> <p>23 And I feel that it's -- something is very off course</p> <p>24 in our country that our president is telling me that</p> <p>25 I'm supposed to pray and what I'm supposed to pray</p>	<p>1 country's rich Nordic-American heritage"?</p> <p>2 A Well, I wasn't aware of it, no, but it doesn't</p> <p>3 violate the separation of church and state.</p> <p>4 Q But you didn't do anything to commemorate Leif</p> <p>5 Erickson Day, did you?</p> <p>6 A I did not personally, no.</p> <p>7 Q But he did call upon all Americans to commemorate the</p> <p>8 day; did he not?</p> <p>9 A Well, it doesn't get nearly the coverage of the</p> <p>10 National Day of Prayer, does it, and there isn't a</p> <p>11 task force devoted to it. I don't think there's a</p> <p>12 federal law enabling that leg -- you know, is there?</p> <p>13 Q Are you aware that there is a German-American</p> <p>14 Heritage Day every year?</p> <p>15 A I am not aware of that, but I'm not surprised.</p> <p>16 Q Why are you not surprised?</p> <p>17 A Because politicians love to make proclamations.</p> <p>18 They -- I think it's in the constitution he can make</p> <p>19 proclamations.</p> <p>20 Q Do politicians like to make proclamations because</p> <p>21 they're political in nature?</p> <p>22 A I think they're mostly pandering, yeah.</p> <p>23 Q Are you aware that in -- on German-American Day in</p> <p>24 2009, President Obama encouraged "all Americans to</p> <p>25 learn how to" -- "to learn more about the history of</p>
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<p>1 about, or even telling religious people what they</p> <p>2 should pray about. I think that's offensive.</p> <p>3 Let people decide for themselves what</p> <p>4 they want to pray about, if they want to pray, and</p> <p>5 when they want to pray.</p> <p>6 Under the First Amendment, the</p> <p>7 president should not be directing us to pray.</p> <p>8 Q Are you aware that the president of the United States</p> <p>9 has, at least for the last several years, issued</p> <p>10 proclamations for Leif Erickson Day?</p> <p>11 A It doesn't surprise me.</p> <p>12 Q And that in such proclamation, he has called upon --</p> <p>13 for example, President Obama in his 2009 Leif</p> <p>14 Erickson Day proclamation has called "upon all</p> <p>15 Americans to observe this day with appropriate</p> <p>16 ceremonies, activities, and programs to honor our</p> <p>17 country's rich Nordic-American heritage"?</p> <p>18 A Well, there's no separation of church and Leif</p> <p>19 Erickson Day -- I mean, state and Leif Erickson Day,</p> <p>20 is there? We have separation of religion and</p> <p>21 government.</p> <p>22 Q That's not my question. My question was, are you</p> <p>23 aware that in that proclamation, he has called "upon</p> <p>24 all Americans to observe this day with appropriate</p> <p>25 ceremonies, activities, and programs to honor our</p>	<p>1 German-Americans and to commemorate the many</p> <p>2 contributions they have made to our nation"?</p> <p>3 A That is something that all Americans could</p> <p>4 conceivably do. But those of us who can't and don't</p> <p>5 pray cannot pray on the National Day of Prayer.</p> <p>6 Q I wasn't asking about --</p> <p>7 A There is a distinction.</p> <p>8 Q I wasn't asking about the National Day of Prayer. I</p> <p>9 was asking about German-American Day. Are you aware</p> <p>10 that he called upon all Americans to commemorate</p> <p>11 German-American Day?</p> <p>12 A I wasn't aware of that.</p> <p>13 Q Okay. Had you been aware of the proclamation, would</p> <p>14 you have done something to commemorate</p> <p>15 German-American Day?</p> <p>16 A No.</p> <p>17 Q Why?</p> <p>18 A Because I don't have time. I'm too busy separating</p> <p>19 church and state.</p> <p>20 Q But he's called upon all Americans to commemorate</p> <p>21 that day; did he not?</p> <p>22 A I don't think that violates my freedom of conscience,</p> <p>23 therefore it is not -- you cannot compare one with</p> <p>24 the other.</p> <p>25 Q So you can ignore his call for all Americans to</p>

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1 commemorate German-American Day with no consequence  
2 whatsoever; can you not?  
3 A Yes.  
4 Q Are you aware that German-American Day is established  
5 by a statute requiring that the president issue an  
6 annual German-American Day proclamation?  
7 A No. But that statute doesn't violate the separation  
8 of church and state. It doesn't violate the  
9 Constitution. It's not outside the purview of  
10 Congress to enact that and for the president to  
11 proclaim it.  
12 Q Well, that's not a decision for us to make here, so  
13 let's move on to the next proclamation. This one --  
14 this is one you probably have heard of. Columbus  
15 Day. Are you aware of Columbus Day?  
16 A Yes.  
17 Q What is Columbus Day?  
18 A I think it's supposed to be the day that Columbus got  
19 to somewhere in the Caribbean.  
20 Q I think it's actually -- I could be wrong on this, I  
21 think it actually is his birthday, although once  
22 every five -- his birthday is close enough to the  
23 date that he discovered the new world that every few  
24 years the dates actually line up, or at least that's  
25 what I learned in looking up Columbus Day.

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1 Columbus Day is a federal holiday; is  
2 it not?  
3 A Yes.  
4 Q A federal holiday is certainly more significant than  
5 just a presidential proclamation; is it not?  
6 A Yes.  
7 Q Federal employees get the day off, as do many private  
8 sector businesses; is that correct?  
9 A This is true. We're open at the foundation. We just  
10 get irritated we don't get our mail.  
11 Q Maybe you get the day after Thanksgiving off.  
12 Federal employees don't. I don't know. Are you  
13 aware that the president of the United States issues  
14 proclamations on Columbus Day?  
15 A I would think he would.  
16 Q Why don't we take a look. I believe this is  
17 Exhibit 32.  
18 (Exhibit 32 marked for identification.)  
19 THE WITNESS: (Witness complies.)  
20 BY MR. ROSENBERG:  
21 Q Have you had a chance to review the 2009 Columbus Day  
22 proclamation?  
23 A Yes.  
24 Q Now, this proclamation also uses the language that  
25 is -- used the language "I call upon all the people

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1 of the United States to observe this day with  
2 appropriate ceremonies and activities."  
3 Do you see that language?  
4 A Yes.  
5 Q And that language is similar to the language in Leif  
6 Erickson Day and German-American Day, and, in fact,  
7 the National Day of Prayer; is it not?  
8 A Yes, but that's not the only language that we are  
9 objecting to.  
10 Q Well, I'm just asking about the Freedom From Religion  
11 Foundation has made an issue of the language in  
12 presidential proclamations that call upon all  
13 Americans to pray.  
14 A Yes.  
15 Q And this uses similar language; does it not?  
16 A Yes, but it doesn't violate the Constitution.  
17 Q Well, we're not deciding that. Let me ask you this  
18 question: You were aware of Columbus Day; were you  
19 not?  
20 A Yes.  
21 Q As an American, did you do anything on that day,  
22 participate in ceremonies or activities commemorating  
23 Christopher Columbus?  
24 A No, I did not.  
25 Q Now, Columbus Day is not without its controversy, is

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1 it?  
2 A My husband considers it very controversial because he  
3 belongs to a Native American/Indian tribe.  
4 Q And why does he consider it controversial?  
5 A Well, because -- you know, there's a hint of that  
6 because of what it was the beginning of for the first  
7 Americans.  
8 Q And, in fact, some groups are extremely offended by  
9 Columbus Day because they view Christopher Columbus  
10 as an individual who was involved in the slave trade.  
11 Are you aware of that?  
12 A I am aware of that.  
13 Q And many Native American groups are very offended by  
14 Columbus Day because they view it as a celebration of  
15 a day that reflects the genocide of a large number of  
16 Native American people. Is that fair?  
17 A I think that's fair. I haven't made a study of it.  
18 Q Would you be surprised if some protesters have  
19 described Columbus Day as a celebration of genocide?  
20 A No.  
21 Q Would you be surprised if Columbus Day parades have  
22 been protested in some cities year after year after  
23 year?  
24 A No, but the difference between Columbus Day and the  
25 National Day of Prayer is, there really was a

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1 Christopher Columbus. And nobody can prove there's a  
2 god you have to pray to. There's the difference.  
3 Q Certainly you would agree that there are many people  
4 who are very deeply offended by Columbus Day?  
5 A You know, I don't know. I guess they would be,  
6 maybe, some of them. I haven't studied it.  
7 Q Do you think your husband is?  
8 A I don't know whether he thinks there shouldn't be  
9 one. I haven't asked him.  
10 Q Why don't we mark this next exhibit as Exhibit  
11 No. 33.  
12 (Exhibit 33 marked for identification.)  
13 BY MR. ROSENBERG:  
14 Q And what I'm looking at, this is a printout of a page  
15 from Wikipedia. And there's a section entitled  
16 "Opposition to Columbus Day Celebrations."  
17 I'm not going to ask any specific  
18 questions about -- about opposition to Columbus Day  
19 celebrations, but certainly it does appear from this  
20 article that more space is devoted to opposition to  
21 Columbus Day celebrations than is devoted to the  
22 actual merits of the holiday.  
23 So would you agree that there are  
24 certainly some people who oppose Columbus Day?  
25 A I really don't understand the relevance of

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1 Wikipedia's entry on Columbus Day to this lawsuit.  
2 Q So is it that you don't understand the relevance of  
3 Wikipedia generally or --  
4 A Well, why are you giving this to me?  
5 Q I want your opinion on whether people are -- whether  
6 you believe that there are some people who are very  
7 offended by Columbus Day.  
8 A I think there are people who are, but that has  
9 nothing to do with the constitutional issue in our  
10 lawsuit, which is that the government is not supposed  
11 to be telling people to pray or having anything to do  
12 with people's private lives with religion.  
13 Q Do you think that the government should be telling  
14 people to celebrate Columbus Day?  
15 A It is not outside the purview of the government to do  
16 that under our Constitution.  
17 Q So you think the government should be telling people  
18 to celebrate Columbus Day?  
19 A I'm saying that it's not unconstitutional.  
20 Q Do you think that it's offensive for the government  
21 to be telling all Americans, including Native  
22 Americans, to celebrate Columbus Day?  
23 A Well, I think I just read his very politically  
24 correct proclamation, and I think they won't be  
25 offended.

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1 Q Why is that?  
2 A Well, he makes quite a few references to their point  
3 of view. He's acknowledging it.  
4 Q And President Obama acknowledged the freedom of  
5 individuals to worship or not worship as they so  
6 choose in his proclamation, did he not?  
7 A But then he told us to pray.  
8 Q And President Obama after issuing what you described  
9 as a politically correct proclamation --  
10 A But I don't --  
11 Q Let me finish my question, please. President Obama,  
12 after issuing what you described as a politically  
13 correct proclamation regarding Columbus Day, then  
14 called upon all Americans -- all the people of the  
15 United States to observe this day with appropriate  
16 ceremonies and activities. Yes or no?  
17 A Yes or no what? I mean, I'm --  
18 Q Did he or did he not, then, after issuing what you  
19 described as a politically correct proclamation  
20 subsequently call upon all Americans to  
21 commemorate -- I want to get the language right,  
22 subsequently "call upon all the people of the United  
23 States to observe this day with appropriate  
24 ceremonies and activities"?  
25 A He did.

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1 Q Let's go back to -- let's go back to Interfaith  
2 Alliance.  
3 MR. BOLTON: Do you want to take a break  
4 right now?  
5 MR. ROSENBERG: Yeah, we can take a break.  
6 I don't think I have that much more.  
7 MR. BOLTON: Okay. Let's take a break.  
8 THE VIDEOGRAPHER: We are off the record at  
9 2:17 p.m.  
10 (A break was taken.)  
11 THE VIDEOGRAPHER: We are back on the  
12 record at 2:25 p.m.  
13 BY MR. ROSENBERG:  
14 Q Ms. Gaylor, earlier we discussed the Interfaith  
15 Alliance and how their letter to President Obama,  
16 before he issued his 2009 proclamation, reflected the  
17 fact that they appeared to share many of the same  
18 objections to the National Day of Prayer as the  
19 Freedom From Religion Foundation?  
20 A Except not really the fundamental one, which is that  
21 they weren't opposing the National Day of Prayer  
22 proclamation itself and the issuance of a National  
23 Day of Prayer proclamation by the president. They  
24 don't represent nonbelievers and people who don't  
25 pray. There's no way that our members can identify

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1 with a National Day of Prayer. They're simply  
2 excluded or they're made invisible. They don't exist  
3 on the first Thursday of May, as far as the president  
4 is concerned. And their freedom of conscience  
5 doesn't truly exist because there's being exhorted to  
6 pray.  
7 Q Well, their letter did state, did it not, that the  
8 National Day of Prayer should be open to believers of  
9 all religions, as well as those who profess no  
10 religion?  
11 A But that's impossible, because those of us who  
12 profess no religion don't pray. We don't believe in  
13 a god that answers prayer or that we, you know,  
14 should beseech in prayer.  
15 Q Well, short of not issuing a National Day of Prayer  
16 proclamation at all, one could certainly acknowledge  
17 the role of nonbelievers in the proclamation itself;  
18 could one not?  
19 A Well, I don't even think that that letter said that,  
20 did it?  
21 Q I'm not asking you about the letter. I'm just asking  
22 you a question.  
23 A Well, I don't think it mitigates the violation, no.  
24 I mean, it doesn't -- it's meaningless. It doesn't  
25 remedy it.

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1 Q But Interfaith Alliance's letter to President Obama  
2 did, on its face, express concern on behalf of not  
3 only believers of other faiths, but also for  
4 nonbelievers; did it not? If you need to take  
5 another look at the letter --  
6 A I do.  
7 Q Okay.  
8 A I have a lot of papers here. Let's see. Thank you.  
9 Q I'm looking at -- just so you know, I'm looking at  
10 that second sentence of the letter.  
11 A Yeah, it was -- but the language of the statute does  
12 not call for an inclusive National Day of Prayer.  
13 Q We've already discussed that. What I'm asking,  
14 though, is, does the face of this letter ask for a  
15 declaration that explicitly opens this day to clergy  
16 and believers of all religions, as well as those who  
17 profess no religion?  
18 A It does, but that's meaningless.  
19 Q Well, that's -- well, I -- my question was simply  
20 whether that was what the Interfaith Alliance and  
21 Jews On First requested of President Obama. So let's  
22 go -- what's our next exhibit number? 34?  
23 (Exhibit 34 marked for identification.)  
24 BY MR. ROSENBERG:  
25 Q Why don't you take a quick look at this -- or take as

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1 long a look as you like, actually. I don't want to  
2 rush you in any way. And then I just have a question  
3 or two for you.  
4 A (Witness complies.)  
5 Q Would you agree that it appears from this letter that  
6 both Interfaith Alliance -- that Interfaith Alliance  
7 was happy with President Obama's 2009 National Day of  
8 Prayer proclamation?  
9 A It sounds like -- like they were, yes.  
10 Q And they explicitly noted, as part of their approval  
11 of that proclamation, that "we must cherish the  
12 Freedom in this country to pray or not to pray"?  
13 A Yeah, so there's a little bit of a contradiction  
14 there. You can't issue a National Day of Prayer  
15 proclamation that is inclusive of all Americans,  
16 because there's 30 million of us, at least, adults  
17 who don't pray.  
18 Q Interfaith Alliance appears to think that you can.  
19 A Well, I think when you read the second paragraph,  
20 Reverend Gaddy seems to really kind of side with us.  
21 He says, "The reality is that we don't need our  
22 elected leaders to instruct us in ways of religion."  
23 So I think it sounds like he would be happier without  
24 a National Day of Prayer. He goes on to say, "If we  
25 are going to have such a day." So that sounds like

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1 he supports our challenge.  
2 Q Well, I suppose ultimately the district court judge  
3 in this case may take a look at this letter and read  
4 it for herself. But while Interfaith Alliance may be  
5 happier, all things equal, with no day of prayer at  
6 all, they nonetheless praised President Obama for his  
7 proclamation; did they not?  
8 A And they are an interfaith alliance made up mostly of  
9 faithful people who pray.  
10 Q But they nonetheless did praise President Obama for  
11 his proclamation; did they not?  
12 A Yes, they did, but I don't.  
13 Q And they did so explicitly noting the freedom of this  
14 country to pray or not to pray; did they not?  
15 A Yes, but that's contradicted by a statute that  
16 requires the president to instruct people to pray.  
17 That doesn't really give you true freedom.  
18 Q I don't want to go back too long on this point, but  
19 at the beginning of my questions we discussed Burnett  
20 County.  
21 MR. BOLTON: I'm sorry, what was that?  
22 MR. ROSENBERG: Burnett County. The  
23 Burnett County Sheriff. What was it in, up country  
24 in Wisconsin?  
25 MR. BOLTON: Up north.



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1 BY MR. ROSENBERG:  
2 Q Up north. Upstate New York I think it's called north  
3 country. Freedom From Religion Foundation opposes  
4 many of the local celebrations that occur regarding  
5 the National Day of Prayer, doesn't it?  
6 A Yes.  
7 Q And I think you had -- Freedom From Religion  
8 Foundation has written letters to local officials  
9 regarding those celebrations?  
10 A Yes. I should say that we don't oppose private  
11 celebrations or commemorations of the National Day of  
12 Prayer. We oppose it when the government gets  
13 involved.  
14 Q And I believe we mentioned -- I'm sorry to talk about  
15 her in the third person when I think she's sitting in  
16 this room, but I think you mentioned that Freedom  
17 From Religion Foundation has hired an attorney within  
18 the past year, in-house?  
19 A Yes.  
20 Q And that attorney has spent at least some of her time  
21 regarding National Day of Prayer-related local  
22 celebrations?  
23 A Yes, she's spent quite a bit of time on it this  
24 spring.  
25 Q So certainly Freedom From Religion Foundation is not

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1 shy about fighting local celebrations when it  
2 believes that those celebrations violate the  
3 establishment clause?  
4 A Yes, we often find out about them after the fact,  
5 however.  
6 Q But when you find out -- you found out about quite a  
7 few of them before the fact?  
8 A Some of them, yes.  
9 Q Because they're usually posted in advance of the  
10 celebration.  
11 A If we find out about it from our members, yes.  
12 Q And, in fact, that's one of your theories of the  
13 case, is that the predictability of the National Day  
14 of Prayer statute makes it easier to coordinate these  
15 celebrations in various states and localities across  
16 the country?  
17 A Yes.  
18 Q So it would be relatively easy to find out about  
19 these celebrations in advance if the Freedom From  
20 Religion Foundation were so inclined?  
21 A We act on complaints from individuals who ask us to  
22 intervene. So they tend to get -- we tend to get  
23 them on the day of the event or after.  
24 Q But in at least a few cases, you found out about  
25 those --

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1 A Yes.  
2 Q -- events far enough in advance that you've been able  
3 to write to local officials?  
4 A Yes.  
5 Q I believe -- maybe there was a celebration in Naples,  
6 Florida where Freedom From Religion Foundation wrote  
7 to local officials regarding a National Day of Prayer  
8 celebration?  
9 A Yes, I believe so.  
10 Q To the best of your knowledge?  
11 A Yeah, I didn't -- yes, that's -- is that right?  
12 We handled Naples, right, there were  
13 some --  
14 Q I don't need to get into the specifics of it, and I  
15 don't want to put your in-house counsel in a position  
16 of answering. Certainly if Freedom From Religion  
17 Foundation felt that it needed to sue to protect its  
18 members' rights regarding a local celebration  
19 involving the National Day of Prayer, it would not  
20 shy away from doing so, would it?  
21 A No. But in Burnett County it was a difficult  
22 situation. We had complaints coming in from members,  
23 but they didn't want their names known in the  
24 community because they were fearful of reprisal.  
25 Q I understand that they're -- that you were unable to

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1 locate plaintiffs who were willing to be named  
2 plaintiffs in a lawsuit --  
3 A Our complainants didn't want to be plaintiffs.  
4 Q I understand that. But there certainly may be other  
5 instances where you may have local -- local Freedom  
6 From Religion members who wish to sue to stop a local  
7 celebration of a National Day of Prayer that they  
8 believe violates the national establishment clause?  
9 A Yes. This was a very specific kind of violation  
10 where the sheriff's office was actually organizing  
11 the prayer -- the National Day of Prayer breakfast  
12 and sending out the invitations and was completely  
13 responsible for it. It was a very particular kind of  
14 violation.  
15 Q And we're not -- I mean, that's not -- let me take  
16 that back. Let me ask -- let me ask this: Do many  
17 of these local celebrations have unique facts to them  
18 that may become relevant in the lawsuit?  
19 MR. BOLTON: I'll object because I think it  
20 calls for speculation. I'm not even sure what the  
21 question itself is asking about, and I'm not sure I  
22 can contemplate what an answer would involve.  
23 BY MR. ROSENBERG:  
24 Q I'll rephrase it, then. That's fair. You mentioned  
25 that the Burnett County Sheriff's Department, one of

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1 the reasons that Freedom From Religion Foundation  
2 objected to that celebration was that it used county  
3 stationery for --  
4 A And organized the whole event as an official  
5 sheriff's event.  
6 Q So depending on the event and how the event is  
7 organized, that may bear on Freedom From Religion  
8 Foundation's analysis as to whether it believes that  
9 the event violates the establishment clause?  
10 A Yes.  
11 Q And if Freedom From Religion Foundation believed that  
12 a local event violated the establishment clause and  
13 believed that it had a basis to bring a lawsuit to  
14 challenge that local event, is there any reason why  
15 Freedom From Religion Foundation might shy away from  
16 doing so?  
17 A Well, yes, but from a practical point of view, we  
18 can't take everything. We are a small organization,  
19 and we have a certain number of cases that we juggle.  
20 And we can't just take a bottomless pit of cases. We  
21 see where we are with certain cases and resources  
22 available and make a decision based on that context.  
23 Q But that type of case -- you know, a case challenging  
24 a local violation of a National Day of Prayer,  
25 assuming that Freedom From Religion Foundation did

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1 have the resources to bring a lawsuit, would be the  
2 type of lawsuit that Freedom From Religion Foundation  
3 would bring; would it not?  
4 A Can you repeat the question?  
5 Q Let me rephrase it. Let me make it a little bit  
6 clearer. This falls within the categories or the  
7 types of lawsuits that Freedom From Religion  
8 Foundation would bring in the sense that these are  
9 the types of alleged violations that Freedom From  
10 Religion Foundation is concerned about?  
11 A You don't have an antecedent to your "this" that you  
12 started your sentence with.  
13 Q "This" being local celebrations of a National Day of  
14 Prayer.  
15 A If they involve egregious entanglements between  
16 government and church, yes.  
17 Q Why don't we mark this as Exhibit No. 35.  
18 (Exhibit 35 marked for identification.)  
19 BY MR. ROSENBERG:  
20 Q Now, I can guarantee that you've never seen this  
21 specific document before, and that's because I wrote  
22 it. Now, I don't have any experience drafting  
23 proclamations until this proclamation, which is  
24 nothing other than a hypothetical proclamation, but I  
25 do want to ask you a question about this hypothetical

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1 draft National Day of Prayer proclamation.  
2 In your view, if a president were to  
3 issue a proclamation in substantially this form, does  
4 Freedom From Religion Foundation -- would Freedom  
5 From Religion Foundation take the position that such  
6 a proclamation would violate the establishment  
7 clause?  
8 A I think so. But none has done -- no proclamation has  
9 been like this since 1952. They've all gone whole  
10 hog in their prayer proclamation.  
11 Q Is it possible, though -- you said you think so. Is  
12 it your position that this proclamation would violate  
13 the establishment clause or would not?  
14 MR. BOLTON: Can I interject? And the  
15 witness can certainly answer the question, but I  
16 would note that in evaluating whether this  
17 hypothetical proclamation would violate the  
18 establishment clause, that if she were actually  
19 evaluating that, that that process would involve a  
20 discussion with counsel. And so the witness can  
21 certainly testify, but recognize that her testimony,  
22 then, will not be informed by the collaboration and  
23 the discussion of this with counsel and the legal  
24 issues that may or may not be raised by the  
25 hypothetical.

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1 MR. ROSENBERG: Just to be clear, then, is  
2 the objection essentially one that this would call  
3 for a legal conclusion?  
4 MR. BOLTON: I'm willing to offer my  
5 opinion on it right now if you would like.  
6 MR. ROSENBERG: I'm actually more  
7 interested in the witness's opinion.  
8 THE WITNESS: I would like to hear Rich's  
9 opinion, as the witness. I would read -- I would  
10 turn to legal counsel.  
11 BY MR. ROSENBERG:  
12 Q Before I hear -- before we hear Rich's opinion, I  
13 would be curious what -- you have been involved in --  
14 how many lawsuits have you been a plaintiff in  
15 involving the establishment clause?  
16 A I don't know how many I've been a plaintiff in. I  
17 mean, I would have to get it and count.  
18 Q A lot?  
19 A A few.  
20 Q Quite a few?  
21 A I don't know. I don't know what you would call quite  
22 a few. Several.  
23 Q Do you consider yourself knowledgeable on issues of  
24 separation of church and state?  
25 A Yes, generally. But I'm not an attorney.

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1 Q Do you have -- I understand that you're not an  
2 attorney. Do you have an opinion on whether a  
3 proclamation written in substantially this form would  
4 violate the establishment clause?  
5 A I believe it would because I do not think the  
6 president has the power under our secular  
7 Constitution to proclaim a National Day of Prayer.  
8 Q Do you -- are there any changes that you think could  
9 be made to this draft proclamation that would allow  
10 it to conform with the establishment clause?  
11 A No. I mean, this is proclaiming a National Day of  
12 Prayer. It's called that. And this is -- this is  
13 not what they are doing for 52 -- since 1952. But I  
14 consider this to be beyond what the president is  
15 entitled to do under the Constitution. It could be  
16 that -- you know, I mean, I think Congress did not --  
17 this is an unconstitutional law.  
18 Q So is it your view that there's no form of a  
19 presidential proclamation that could conform with the  
20 National Day of Prayer statute and at the same time  
21 be consistent with the establishment clause?  
22 A Yes. I don't think that there can be a National Day  
23 of Prayer proclaimed by the federal government and  
24 president consistent with the establishment clause.  
25 Q Do you object to presidential Thanksgiving Day

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1 proclamations that also incorporate elements of  
2 prayer?  
3 A I personally object to the religion intruding. But  
4 Thanks -- I do not consider the Thanksgiving  
5 proclamation to be a religious purpose. Our family  
6 celebrates Thanksgiving. Free thinkers celebrate  
7 Thanksgiving. We give thanks to the cook.  
8 MR. BOLTON: They have a cookbook.  
9 MR. ROSENBERG: And on that note, I think I  
10 actually have turkeys to brine because Thanksgiving  
11 Day is coming up. So I don't -- I don't think I have  
12 any further questions.  
13 MR. BOLTON: Thanks a lot.  
14 THE VIDEOGRAPHER: This is the conclusion  
15 of the deposition. We are off the record at  
16 2:45 p.m.  
17 (Deposition concluded at 2:45 p.m.)  
18 (Original exhibits attached to original transcript.)  
19 (Copies of exhibits attached to copies of transcript.)  
20  
21  
22  
23  
24  
25

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1 STATE OF WISCONSIN )  
2 MILWAUKEE COUNTY ) SS:  
3  
4 I, Sarah A. Hart, RPR, RMR, CRR and  
5 Notary Public in and for the State of Wisconsin, do  
6 hereby certify that the preceding deposition was  
7 recorded by me and reduced to writing under my  
8 personal direction.  
9 I further certify that said deposition  
10 was taken at BOARDMAN, SUHR, CURRY & FIELD, LLP, One  
11 South Pinckney Street, Suite 410, Madison, Wisconsin,  
12 on the 24th day of November, 2009, commencing at  
13 10:08 a.m.  
14 I further certify that I am not a  
15 relative or employee or attorney or counsel of any of  
16 the parties, or a relative or employee of such  
17 attorney or counsel, or financially interested  
18 directly or indirectly in this action.  
19 In witness whereof, I have hereunto  
20 set my hand and affixed my seal of office on this  
21 30th day of November, 2009.  
22  
23  
24 SARAH A. HART, RPR, RMR, CRR  
Notary Public  
25 My commission expires October 2nd, 2011

	<b>11:15 (1)</b> 47:23	<b>2 (3)</b> 30:16;33:2;36:7		68:23;69:9
<b>\$</b>	<b>11:35 (1)</b> 63:13	<b>2:17 (1)</b> 133:9	<b>3</b>	<b>70s (2)</b> 73:25;74:8
<b>\$1,000 (1)</b> 39:24	<b>119 (1)</b> 114:5	<b>2:25 (1)</b> 133:12	<b>3.2 (2)</b> 32:17,19	<b>71,000 (1)</b> 33:6
<b>\$192,000 (1)</b> 32:8	<b>12,000 (1)</b> 38:13	<b>2:45 (2)</b> 147:16,17	<b>30 (7)</b> 69:12;95:23; 113:23;114:2,2,2; 136:16	<b>75/25 (1)</b> 26:9
<b>\$2,048,557 (1)</b> 28:22	<b>12:28 (1)</b> 63:16	<b>200 (1)</b> 102:22	<b>30,000 (1)</b> 75:25	<b>76 (3)</b> 8:19;55:22;59:11
<b>\$29,541.85 (1)</b> 31:9	<b>14,000 (3)</b> 34:21;103:9; 104:16	<b>2001 (2)</b> 15:4,6	<b>305,000 (1)</b> 32:3	<b>77 (2)</b> 55:22;59:11
<b>\$40 (1)</b> 39:23	<b>15,029 (1)</b> 105:21	<b>2004 (9)</b> 8:16;31:24,25; 32:7,18;33:12,21; 34:9;39:12	<b>31 (2)</b> 118:23,25	<b>78 (3)</b> 9:11;55:22;59:11
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<b>\$595,000 (1)</b> 32:23	<b>1700 (3)</b> 103:7,8;105:17	<b>2005/2006 (1)</b> 34:10	<b>33 (2)</b> 130:11,12	<b>80 (1)</b> 9:12
<b>\$914,000 (3)</b> 30:19;31:17,18	<b>1747 (1)</b> 104:2	<b>2006 (4)</b> 34:12,13,17,18	<b>34 (2)</b> 135:22,23	<b>803,000 (1)</b> 32:1
<b>\$994,000 (1)</b> 32:22	<b>1820s (1)</b> 49:9	<b>2007 (1)</b> 39:12	<b>35 (3)</b> 11:14;143:17,18	<b>80s (3)</b> 59:17;60:13; 75:23
<b>0</b>	<b>1892 (1)</b> 48:15	<b>2008 (18)</b> 12:16;27:19; 28:17,22;30:15,19; 35:25,25;36:11,13, 14;38:9,23;39:2; 42:16,17;43:11,18	<b>4</b>	<b>83,000 (1)</b> 33:7
<b>08 (2)</b> 31:4;43:22	<b>19 (1)</b> 118:3	<b>2009 (25)</b> 5:4;12:14;13:24; 14:15;27:10,13,15; 38:15,19;39:14,19; 42:18;43:23;90:24; 91:25;92:19;97:14, 24;101:24;111:12; 123:13;124:24; 127:21;133:16; 136:7	<b>40 (3)</b> 33:23;34:1;41:1	<b>84 (1)</b> 9:6
<b>08-CV-588 (1)</b> 5:10	<b>19,182 (1)</b> 31:12		<b>5</b>	<b>85 (3)</b> 8:21;11:15;59:18
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<b>1</b>	<b>1950s (1)</b> 83:4		<b>50/50 (1)</b> 26:9	<b>9</b>
<b>1 (1)</b> 54:13	<b>1952 (6)</b> 48:10;96:25; 113:16;117:3; 144:9;146:13		<b>500 (1)</b> 103:6	<b>9/11 (3)</b> 55:1,10,14
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<b>1.1 (1)</b> 30:17	<b>1965 (3)</b> 119:11,14;120:7		<b>59,464 (1)</b> 29:2	<b>9th (1)</b> 14:18
<b>1:10 (1)</b> 98:10	<b>1970s (1)</b> 74:6		<b>590 (1)</b> 109:7	<b>A</b>
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<b>1:40 (1)</b> 107:5	<b>1980 (2)</b> 9:4;79:5		<b>6,000 (4)</b> 34:11;103:15; 104:3,4	<b>abortion (8)</b> 18:3,10,12,18; 19:4,13;20:6;21:8
<b>10 (3)</b> 11:8,9;45:4	<b>1980s (4)</b> 59:17;74:13,25; 75:20		<b>6.4 (1)</b> 31:20	<b>above (1)</b> 12:6
<b>10:08 (1)</b> 5:3	<b>1983 (2)</b> 29:12;77:24		<b>611,000 (1)</b> 32:6	<b>absolutely (1)</b> 102:13
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<b>10:55 (1)</b> 40:17	<b>1st (3)</b> 50:10;54:21,23		<b>7,000 (3)</b> 34:11,18,19	<b>according (3)</b> 92:8;115:18; 120:2
<b>10:56 (1)</b> 40:20	<b>2</b>		<b>70 (2)</b>	<b>account (1)</b> 34:22
<b>100 (1)</b> 103:4				<b>accurate (1)</b>
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